

No. 12967

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United States  
Court of Appeals  
for the Ninth Circuit.

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LUCY K. WARD, Next Friend of Hattie Kulamanu  
Ward and LUCY K. WARD and KATHLEEN  
WARD,

Appellants,

vs.

LANIE W. BOOTH and MELLIE E. HUSTACE  
and HAWAIIAN TRUST COMPANY,  
LIMITED, in Its Corporate Capacity and as  
Guardian of the Estate of Hattie Kulamanu  
Ward,

Appellees.

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Transcript of Record

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Appeal from the Supreme Court of the  
Territory of Hawaii



No. 12967

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United States  
Court of Appeals  
for the Ninth Circuit.

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LUCY K. WARD, Next Friend of Hattie Kulamanu  
Ward and LUCY K. WARD and KATHLEEN  
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and HAWAIIAN TRUST COMPANY,  
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Guardian of the Estate of Hattie Kulamanu  
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Appellees.

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Appeal from the Supreme Court of the  
Territory of Hawaii





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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

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## NAMES AND ADDRESSES OF ATTORNEYS

BOUSLOG & SYMONDS,  
HARRIET BOUSLOG,

63 Merchant Street,  
Honolulu, Hawaii,

Attorneys for Lucy K. Ward, as next  
friend of Hattie Kulamanu Ward,  
and Lucy K. Ward and Kathleen  
Ward, appellants.

ROBERTSON, CASTLE & ANTHONY,  
J. GARNER ANTHONY,

312 Castle & Cooke Building,  
Honolulu, Hawaii,

Attorneys for Lani W. Booth, Mellie  
E. Hustace, and Hawaiian Trust Co.,  
Ltd., appellees. [1\*]

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\*Page numbering appearing at foot of page of original Certified Transcript of Record.



In the Supreme Court of the Territory of Hawaii  
No. 2761

Appeal from the Circuit Court, First Judicial Circuit, the Honorable Albert M. Cristy, at Chambers in Probate Proceedings. Probate No. 15530.

In the Matter of:

THE GUARDIANSHIP OF HATTIE KULAMANU WARD,

An Incompetent.

In the Supreme Court of the Territory of Hawaii  
No. 2762

Error to the Circuit Court, First Judicial Circuit, the Honorable Albert M. Cristy, at Chambers in Probate Proceedings. Probate No. 15530.

In the Matter of:

THE GUARDIANSHIP OF HATTIE KULAMANU WARD,

An Incompetent.

#### NOTICE OF APPEAL

Notice is hereby given that the appellants in the above-entitled causes, Lucy K. Ward, next friend of Hattie Kulamanu Ward, and Lucy K. Ward and Kathleen Ward, hereby appeal to the United States Court of Appeals for the Ninth Circuit from the decision of the Supreme Court of the Territory of Hawaii dated February 2, 1951, rehearing denied April 18, 1951, and orders therein dated May 5, 1951, affirming the orders of the Circuit [4] Court



of the First Judicial Circuit, Territory of Hawaii, the Honorable Albert M. Cristy, at chambers in probate proceedings, presiding, finding Hattie Kulamanu Ward incompetent to manage her affairs, and appointing as her guardian the Hawaiian Trust Company, Limited, and the order vacating the appointment of Lucy K. Ward, next friend of Hattie Kulamanu Ward, dissolving a temporary restraining order, and denying, without hearing on the merits, the motion of said appellant Lucy K. Ward, next friend of Hattie Kulamanu Ward, to vacate the order appointing Hawaiian Trust Company, Ltd., as guardian of the estate of Hattie Kulamanu Ward, or to remove said guardian and to hold further hearings.

Dated: Honolulu, T. H., May 17th, 1951.

BOUSLOG & SYMONDS,

By /s/ HARRIET BOUSLOG,

Attorneys for Appellants.

Certified true copy.

[Endorsed]: Filed Supreme Court, T. H., May 17, 1951. [5]

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In the Supreme Court of the Territory of Hawaii  
[Title of Cause.]

Nos. 2761 and 2762

PETITION FOR APPEAL

Come now Lucy K. Ward, next friend of Hattie Kulamanu Ward, and Lucy K. Ward and Kathleen



Ward, appellant, by Bouslog & Symonds, their attorneys, and deeming themselves aggrieved by the final opinion and decision of this Court made and entered in the above-entitled causes on the 2nd day of February, 1951, the opinion and decision denying appellants' Petition for Rehearing on April 18, 1951, and the judgment on writ of error [7] and decree on appeal made and entered on the 5th day of May, 1951, pray that an appeal may be allowed from said opinions and decisions and judgment on writ of error and decree on appeal, to the United States Court of Appeals for the Ninth Circuit under and according to the laws of the United States; that an order be made fixing the amount of security that said appellants shall give and that the clerk of the Supreme Court of the Territory of Hawaii be directed to send to the United States Court of Appeals for the Ninth Circuit a transcript of the record proceedings, documentary exhibits and papers duly authenticated.

In connection with this appeal, appellants herewith present their assignments of error and state that the writ of error and appeal were prosecuted to this Court from an order of the Honorable Albert M. Cristy, at Chambers in Probate, appointing the Hawaiian Trust Company, Limited, guardian of the estate of Hattie Kulamanu Ward, in which proceedings appellant Lucy K. Ward and Kathleen Ward, sisters of the alleged incompetent, intervened and opposed the appointment of the said guardian and from an order vacating the appointment of Lucy K. Ward, next friend of Hattie Kula-

manu Ward, dissolving a temporary restraining order against the Hawaiian Trust Company and denying, without hearing on the merits, the motion of Lucy K. Ward, as next friend of Hattie Kulamanu Ward, to vacate the appointment of the guardian, or to remove the guardian on the ground of unsuitability.

Appellants further state, insofar as the appeal and writ of error is prosecuted by appellant Lucy K. Ward, next friend of Hattie Kulamanu Ward, for and on behalf of said Hattie Kulamanu [8] Ward, that the property and estate of said Hattie Kulamanu Ward is far in excess of the sum of \$5,000.00, being of the value of \$1,000,000.00 or more, and the right of said Hattie Kulamanu Ward to manage her property and estate or to select management of her own choosing is therefore in excess of \$5,000.00.

Appellants further state that insofar as the writ of error is prosecuted by appellants Lucy K. Ward and Kathleen Ward, sisters of Hattie Kulamanu Ward, on their own behalf, each of them, together with Hattie Kulamanu Ward, the alleged incompetent, is a joint owner with rights of supervisorship of a one-third undivided interest in large parcels of real estate in the City and County of Honolulu, the value of which is far in excess of \$5,000.00, and is of a value in excess of \$1,000,000.00.

That the right of appellants Lucy K. Ward and Kathleen Ward to manage this joint property without interference and consultation and consent by the said guardian, the officers and agents of which

are unacceptable to and antagonistic to them, is in excess of \$5,000.00.

Appellants further state that a portion of the assets of the estate of Hattie Kulamanu Ward consists of stock in a family corporation, Victoria Ward, Limited; that there are issued and outstanding by said corporation 5,200 shares of stock; that these stocks are owned as follows:

Hattie Kulamanu Ward,	
daughter of Victoria Ward..	1,230 shares
Lucy K. Ward, daughter of	
Victoria Ward.....	1,222 shares
Kathleen Ward, daughter of	
Victoria Ward.....	1,222 shares
Cenric Nourse Wodehouse, son	
of Mae Wodehouse, deceased,	
daughter of Victoria Ward..	642 shares
Lani W. Booth, daughter of	
Victoria Ward.....	874 shares
Mellie E. Hustace, daughter	
of Victoria Ward.....	10 shares

That the stock of appellants Lucy K. Ward and Kathleen Ward in said corporation is in excess of \$5,000.00, and is in the approximate amount of \$400,000.00; that prior to appointment of said guardian, appellant Kathleen Ward was the president of said family corporation, and appellant Lucy K. Ward was the treasurer of said family corporation, and as said officers were active managers of said corporation and received as said officers, for their services, salaries in excess of \$5,000.00 per



year; that said guardian has used its control over the shares of stock of said incompetent, in combination with Lani W. Booth and Mellie E. Hustace, petitioners for the appointment of said Hawaiian Trust Company, Limited, and Cenric Nourse Wodehouse, to oust appellants Lucy K. Ward and Kathleen Ward as managers of said family corporation, has placed said corporation under management antagonistic to and unacceptable to said appellants; that the right of appellants to have said corporation managed by an impartial management not antagonistic to and unacceptable to them is a valuable property right worth in excess of \$5,000.00.

Appellants further state that these causes involve the Constitution of the United States, the Hawaiian Organic Act, [10] and authority exercised thereunder, in that Sections 12508 and 12509 of the Revised Laws of Hawaii, 1945, as construed and applied in these causes, deny to appellants due process of law guaranteed by the Fifth Amendment to the Constitution of the United States, and Section 12509, Revised Laws of Hawaii, 1945, on its face and as construed and applied, is in contravention of the Fifth and Seventh Amendments to the Constitution of the United States in that it does not provide for or authorize due process of law by providing for a trial by jury of the issue of insanity.

Appellants further state that a denial of due process of law under the Fifth Amendment to the Constitution is involved in that the Honorable Albert M. Cristy manifested such bias and prejudice

against appellant Lucy K. Ward that she was denied a hearing before a fair and impartial tribunal.

Dated: Honolulu, T. H., this 17th day of May, 1951.

BOUSLOG & SYMONDS,

By /s/ HARRIET BOUSLOG,

Attorneys for Appellants Lucy K. Ward, as next friend of Hattie Kulamanu Ward, and Lucy K. Ward and Kathleen Ward.

Territory of Hawaii,  
City and County of Honolulu—ss.

Harriet Bouslog, being first duly sworn, deposes and says that she is one of the attorneys for the appellants named in the foregoing Petition for Appeal, that she has read the [11] foregoing Petition, knows the contents thereof, and that the matters and things therein set forth are true of her own knowledge.

HARRIET BOUSLOG.

Subscribed and sworn to before me this 17th day of May, 1951.

[Seal] /s/ J. D. MARQUES,

Notary Public, First Judicial Circuit, Territory of Hawaii.

My Commission Expires July 15, 1953.

Certified true copy.

[Endorsed]: Filed Supreme Court, T. H., May 17, 1951. [12]

In the Supreme Court of the Territory of Hawaii  
Nos. 2761 and 2762

[Title of Cause.]

## ASSIGNMENT OF ERRORS

### Assignment No. 1

The Supreme Court of the Territory of Hawaii, hereinafter referred to as the "Court," erred in making and entering its Opinion and Decision on the 2nd day of February, 1951, in the above-entitled Court and causes.

### Assignment No. 2

The Court erred in making and entering its Opinion and Decision denying the Petition for Re-hearing on the 18th day of [14] April, 1951, in the above-entitled Court and cause.

### Assignment No. 3

The Court erred in making and entering its Judgment on Writ of Error and Decree on Appeal, on the 5th day of May, 1951, in the above-entitled Court and cause.

### Assignment No. 4

The Court erred in its conclusion that the Fifth and Seventh Amendments to the Constitution of the United States do not guarantee to persons resident in the Territory of Hawaii, including Hattie Kulanu Ward, who here appears by her next friend Lucy K. Ward, the right to a jury trial on the issue of sanity, and hence that Section 12509 of

Revised Laws of Hawaii is valid and not in contravention of these Amendments.

Assignment No. 5

The Court erred in making and entering its Judgment on Writ of Error and Decree on Appeal in that Sections 12508 and 12509, Revised Laws of Hawaii, 1945, as construed and applied in these causes, deny appellants due process of law in violation of the Fifth Amendment to the Constitution of the United States in the following respects:

a. As construed and applied, these sections permit a finding of incompetency without a determination or finding of notice as required by statute.

b. As construed and applied, these sections permit the appointment of a guardian ad litem for an adult alleged to be incompetent, without notice to the alleged incompetent.

c. As construed and applied, these sections permit the [15] appointment of a guardian which has or may have conflicting interest.

d. As construed and applied, these sections permit appointment as guardian of nominee of two petitioning sisters, over the opposition of two intervening sisters with equal interests and equal rights.

e. As construed and applied, these sections authorize appointment of guardian on petition of some relatives without allowance of a full and fair hearing to intervening relatives, with equal interests and rights, who opposed petition in respect to motives of petitioners in seeking appoint-



ment of guardian, and in that by such ruling intervenors were foreclosed from having a full and fair hearing by ruling of Court.

f. As construed and applied, these sections deny due process and full and fair hearing to intervenors who have equal status with petitioners for guardianship, in that Court ruled intervenors had under statute no standing to object, and had as a matter of law conflicting interest when no such conflict existed in fact or law, and Court's ruling precluded intervenors from showing absence of conflict.

g. In that these sections, as construed and applied, permit the appointment of a guardian without a finding of insanity.

### Assignment No. 6

The Court erred in making and entering its Judgment on Writ of Error affirming the order appointing the Hawaiian Trust Company, Ltd., guardian of the Estate of Hattie Kulamanu Ward, and making and entering the Decree on Appeal affirming the order vacating the appointment of Lucy K. Ward, next friend of Hattie [16] Kulamanu Ward, dissolving the temporary restraining order and denying the motion to set aside the order appointing the guardian or to remove the guardian, in that there is error and abuse of discretion which amounts to a denial to appellants of due process of law and a denial of a full and fair hearing under the showing made that:



1. The alleged incompetent had been examined by a reputable alienist, who found her competent to select the person she desired to manage her affairs.

2. The motives of the two petitioning sisters, who sought to have Hattie Kulamanu Ward declared incompetent, were suspect for reasons fully set forth in the verified motion.

3. That the Hawaiian Trust Company had conflicting interests which made it an unsuitable guardian.

4. The alleged incompetent's property was and had been properly cared for by a person chosen by her, she having, according to proffered evidence, competence to select the person she wished to assist her.

5. The appointment of the Hawaiian Trust Company as guardian would change the management of the family corporation, and that by so appointing the nominee of the two petitioning sisters, the Hawaiian Trust Company, the Court was taking sides in a family dispute without any knowledge of the facts or merits of the respective sides in said dispute, and was not only depriving the alleged incompetent of the right to manage her property and estate or select whom she desired to manage it, but was also effectively robbing the two sisters who opposed the petition—because of the unique circumstances shown in the petition—of the right to manage their own property, or to have it managed

by an impartial person or trust company not antagonistic [17] to them and to their interests, and not committed to a course of action against their wishes.

#### Assignment No. 7

The Court erred in refusing to consider on the merits certain assignments of error on the ground that they were not made the subject of exceptions, it being settled law in the Territory that in proceedings of an equitable nature, errors apparent on the face of the record may be corrected by writ of error regardless of the taking of exceptions.

#### Assignment No. 8

The Court erred in its conclusion that Section 12509 does not afford appellants, as a matter of right, a hearing on the merits of the motion to remove the Hawaiian Company, Ltd., as guardian on the ground of unsuitability.

#### Assignment No. 9

The Court erred in its conclusion that the manifest bias and prejudice shown by the circuit judge against appellant Lucy K. Ward, next friend of Hattie Kulamanu Ward, did not constitute a denial of due process of law on motion to vacate the order appointing the guardian, or to remove the guardian.

Wherefore, appellants pray that the Opinion and Decision of the Supreme Court of the Territory of Hawaii, entered in the above-entitled causes on the

2nd day of February, 1951, denying rehearing on the 18th day of April, 1951, and the Judgment on Writ of Error and Decree on Appeal of the said Supreme Court entered in the above-entitled cause on the 5th day of May, 1951, [18] be reversed and for such other and further relief as may be proper.

Dated: Honolulu, T. H., this 17th day of May, 1951.

BOUSLOG & SYMONDS,

By /s/ HARRIET BOUSLOG,

Attorneys for Appellants Lucy K. Ward, as next friend of Hattie Kulamanu Ward, and Lucy K. Ward and Kathleen Ward.

Certified true copy.

[Endorsed]: Filed Supreme Court, T. H., May 17, 1951. [19]

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In the Supreme Court of the Territory of Hawaii

Nos. 2761 and 2762

[Title of Cause.]

ORDER ALLOWING APPEAL AND  
FIXING AMOUNT OF BOND

Upon reading and filing the verified petition of appellants Lucy K. Ward, next friend of Hattie Kulamanu Ward, and Lucy K. Ward and Kathleen Ward, by Harriet Bouslog of Bouslog & Symonds, their attorneys, in which they pray that an appeal may be allowed them from the final opinion and

decision of this Court, made and entered in the above-entitled causes on the 2nd day of February, 1951, and denying rehearing on the 18th [21] day of April, 1951, and judgment on writ of error and decree on appeal, made and entered on the 5th day of May, 1951, in the above-entitled causes to the United States Court of Appeals for the Ninth Circuit, and upon petitioners' filing an assignment of errors together with said petition for appeal, together with a bond for costs in the sum of Two Hundred Fifty Dollars (\$250.00).

It Is Hereby Ordered that said appeal be and it is hereby allowed and that the bond for costs in the sum of Two Hundred Fifty Dollars (\$250.00) filed herein be and it is hereby approved.

Dated: Honolulu, T. H., this 17th day of May, 1951.

[Seal]      /s/ LOUIS LeBARON,  
Justice.

Certified true copy.

[Endorsed]: Filed Supreme Court, T. H., May 17, 1951. [22]



In the Supreme Court of the Territory of Hawaii

Nos. 2761 and 2762

[Title of Cause.]

### BOND ON APPEAL

Know all men by these presents, that Lucy K. Ward, next friend of Hattie Hulamanu Ward, and Lucy K. Ward and Kathleen Ward, as principals, and United States Fidelity and Guaranty Company, a corporation duly licensed to carry on business in the Territory of Hawaii, as surety, are held and firmly bound unto the appellee in the above-entitled causes, in the sum of Two Hundred Fifty Dollars (\$250.00), for the payment of which well and truly to be made, we bind ourselves and [24] our successors and assigns, jointly and severally, and firmly by these presents.

The condition of this obligation is such that:

Whereas, the above bounden principals have filed their petition for appeal from the Supreme Court of the Territory of Hawaii to the United States Court of Appeals for the Ninth Circuit to reverse the final opinion and decision of this Court made and entered in the above-entitled causes on the 2nd day of February, 1951, and denying rehearing on the 18th day of April, 1951, and judgment on writ of error and decree on appeal made and entered on the 5th day of May, 1951.

Now, Therefore, if the said principals shall prosecute their appeal with effect and answer all costs if they fail to sustain said appeal, then this

obligation shall be void, otherwise it remains in full force and effect.

Sealed with our seal, and dated this 17th day of May, 1951.

/s/ LUCY K. WARD,  
Next Friend of Hattie  
Kulamanu Ward;

/s/ LUCY K. WARD, and  
/s/ KATHLEEN WARD,

UNITED STATES FIDELITY AND GUAR-  
ANTY COMPANY,

[Seal] By /s/ JOHN F. HRON,  
Its Attorney in Fact. [25]

The foregoing bond is hereby approved as to form, amount and sufficiency of surety.

.....,  
Justice.

Territory of Hawaii,  
City and County of Honolulu—ss.

On this 17th day of May, 1951, before me appeared Lucy K. Ward and Kathleen Ward, to me personally known, who being by me duly sworn, did say that they are the principals named in the foregoing Bond on Appeal, and acknowledged said instrument as their free act and deed.

[Seal] /s/ A. F. MARQUES,  
Notary Public, First Judicial Circuit, Territory of  
Hawaii.

My commission expires June 30, 1953.

Territory of Hawaii,  
City and County of Honolulu—ss.

On this 17th day of May, 1951, before me personally appeared John F. Hron, to me personally known, who being by me duly sworn did say that he is the Attorney-in-Fact of the United States Fidelity and Guaranty Company, duly appointed under Power of Attorney dated the 30th day of November, 1936, which Power of Attorney is now in full force and effect, and that the seal affixed to said instrument is the corporate seal of said corporation, and that said instrument was signed [26] and sealed on behalf of said corporation under the authority of its Board of Directors and said John F. Hron acknowledged said instrument to be the free act and deed of said corporation.

[Seal]      /s/ WILLIAM B. STEVEN,  
Notary Public, First Judicial Circuit, Territory of  
Hawaii.

My commission expires May 6, 1952.

Certified true copy.

[Endorsed]: Filed Supreme Court, T. H., May  
17, 1951. [27]

In the Supreme Court of the Territory of Hawaii

Nos. 2761 and 2762

[Title of Cause.]

### CITATION

To: Lani W. Booth and Mellie E. Hustace, and Hawaiian Trust Company, Limited, in its corporate capacity, and as Guardian of the Estate of Hattie Kulamanu Ward:

You, and each of you, are hereby cited and admonished to be and appear before the United States Court of Appeals for the Ninth Circuit, at the Court of San Francisco, State of California, within forty days from the date of this citation, pursuant to an appeal duly allowed by the Supreme Court of the Territory of Hawaii on the 17th day of May, 1951, in the above-entitled [33] causes wherein Lucy K. Ward, next friend of Hattie Kulamanu Ward, and Lucy K. Ward and Kathleen Ward are appellants, and you are appellees, to show cause, if any, why the final opinion and decision of this Court, made and entered on the 2nd day of February, 1951, rehearing denied on the 18th day of April, 1951, and the judgment on writ of error and decree on appeal made and entered on the 5th day of May, 1951, should not be corrected and why speedy justice should not be done to the parties in their behalf.

Witness the Honorable Louis LeBaron, Acting



Chief Justice of the Supreme Court of the Territory of Hawaii, this 17th day of May, 1951.

[Seal]     /s/ LOUIS LeBARON,  
Acting Chief Justice of the Supreme Court of the  
Territory of Hawaii.

Certified true copy.

[Endorsed]: Filed Supreme Court, T. H., May  
17, 1951. [34]

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In the Circuit Court of the First Judicial Circuit,  
Territory of Hawaii

P. No. 15530

At Chambers

In Probate

In the Matter of:

THE GUARDIANSHIP OF HATTIE KULAMANU WARD,

An Incompetent Person.

PETITION FOR APPOINTMENT  
OF GUARDIAN

To the Honorable Presiding Judge in and of the  
Above-Entitled Court:

Come now Lani W. Booth and Mellie E. Hustace,  
residing in the City and County of Honolulu, Territory of Hawaii, and respectfully show as follows:

1.

That they are sisters of the above-mentioned

Hattie Kulamanu Ward, an incompetent person, residing in Honolulu, Hawaii;

## 2.

That said Hattie Kulamanu Ward is 79 years of age and by reason of advanced age and physical and mental infirmities has become incompetent to understand business affairs or to care for her property and is non compos; that she is the owner of extensive property, real and personal, situated in the Territory of Hawaii, of a value in excess of \$500,000; [39]

## 3.

That at the present time, due to the incompetence of said Hattie Kulamanu Ward, her business affairs are being conducted by her sister, Lucy K. Ward, as attorney-in-fact, and there is or may be a conflict of interests between Hattie Kulamanu Ward and her attorney-in-fact, Lucy K. Ward;

## 4.

That it is necessary that a suitable guardian be appointed to care for the property of said incompetent, and that Hawaiian Trust Company, Limited, a corporation organized under the laws of the Territory of Hawaii and authorized to act as a fiduciary, is a suitable and proper person to be appointed as such guardian and has consented to act as such guardian.

Wherefore, petitioners pray that said Hawaiian Trust Company, Limited, be appointed guardian of the property of said Hattie Kulamanu Ward, and

petitioners further pray that an order be made and entered directing that notice of this petition and of the time and place of hearing same be given to the said Hattie Kulamanu Ward.

Dated: Honolulu, Hawaii, November 20th, 1948.

/s/ LANI W. BOOTH,

/s/ MELLIE E. HUSTACE,

Petitioners. [40]

Territory of Hawaii,  
City and County of Honolulu—ss.

Lani W. Booth and Mellie E. Hustace, each for herself and not one for another, being first duly sworn, on oath deposes and says:

That she is a petitioner named in the foregoing petition; that she has read the said petition, knows the contents thereof, and that the same is true.

/s/ LANI W. BOOTH,

/s/ MELLIE E. HUSTACE.

Subscribed and sworn to before me this 20th day of November, 1948.

[Seal] /s/ JEAN M. WINSLEY,  
Notary Public, First Judicial Circuit, Territory of  
Hawaii.

My commission expires June 9, 1950. [41]

#### Officer's Return

Served the within Petition for Appointment of Guardian and Affidavit on Hattie Kulamanu Ward, an incompetent person, in the presence of Miss Kathleen Ward, a person who appeared to me to

be of sound mind, therein named in said Petition as an incompetent person, at 9:20 a.m., at 959 South King Street (Old Plantation), Honolulu, City and County of Honolulu, Territory of Hawaii, this 24th day of November, A.D. 1948, by delivering to her personally a true and attested copy thereof and at the same time showing her the original.

Dated: Honolulu, T. H., November 24th, 1948.

/s/ MOSES WRIGHT

KAULULAAU,

Chief Court Officer and Bailiff, First Circuit Court,  
T. H. Certified true copy

[Endorsed]: Filed Circuit Court, T. H., November 23, 1948. [42]

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In the Circuit Court of the First Judicial Circuit,  
Territory of Hawaii

P. No. 15530

[Title of Cause.]

### ORDER OF SERVICE OF PETITION

Upon reading and filing of the petition for the appointment of a guardian for Hattie Kulamanu Ward, and good cause appearing therefor,

It Is Hereby Ordered that a certified copy of said petition and of this order be served on the said Hattie Kulamanu Ward by the bailiff of this court or any police officer of the City and County of Honolulu;

It Is Further Ordered that the hearing of said



petition be had on the 14th day of Dec., 1948, in the courtroom of the undersigned judge of the above-entitled court in the Judiciary Building, Honolulu, Hawaii, at 1:30 o'clock p.m. of said day.

Dated: Honolulu, Hawaii, November 23, 1948.

[Seal]      /s/ JOHN E. PARKS,  
Judge of the Above-Entitled  
Court.

Attest:

/s/ F. A. HONG,  
Clerk. [44]

Officer's Return

Served the within Order on Hattie Kulamanu Ward, an incompetent person, in the presence of Miss Kathleen Ward, a person who appeared to me to be of sound mind, therein named as an incompetent person, at 9:20 a.m., at 959 South King Street (Old Plantation), Honolulu, City and County of Honolulu, Territory of Hawaii, this 24th day of November, A.D. 1948, by delivering to her personally a true and attested copy thereof and at the same time showing her the original.

Dated: Honolulu, T. H., November 24th, 1948.

/s/ MOSES WRIGHT  
KAULULAAU,

Chief Court Officer and Bailiff, First Circuit  
Court, T. H.

Certified true copy.

[Endorsed]: Filed Circuit Court, T. H., November 23, 1948. [45]

In the Circuit Court of the First Judicial Circuit,  
Territory of Hawaii

P. No. 15530

[Title of Cause.]

### ORDER

Good cause appearing therefor, It Is Hereby Ordered that J. Edward Collins, Esq., is hereby appointed guardian ad litem for Hattie Kalumanu Ward, pursuant to Section 12509, R.L.H. 1945, and

It Is Further Ordered that notice be given such guardian ad litem by the service of a copy of the petition for appointment of guardian and of this order.

Dated: Honolulu, Hawaii, December 16, 1948.

[Seal]      /s/ WILLSON C. MOORE,  
Judge of the Above-Entitled  
Court.

Attest:

/s/ M. K. YOUNG.

[Endorsed]: Filed Circuit Court, T. H., December 17, 1948. [47]

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In the Circuit Court of the First Judicial Circuit,  
Territory of Hawaii

P. No. 15530

[Title of Cause.]

### ORDER APPOINTING GUARDIAN

The petition of Lani W. Booth and Mellie E.

Hustace of the City and County of Honolulu, Territory of Hawaii, for the appointment of Hawaiian Trust Company, Limited, as the guardian of the Estate of Hattie Kalumanu Ward, an incompetent person, coming on regularly to be heard before me the 13th day of January, 1949, whence it appeared from examination that the said incompetent has no guardian legally appointed, that said incompetent is a resident of the aforesaid City and County of Honolulu and has an estate within the jurisdiction of this Court requiring the care and attention of a guardian, and that Hawaiian Trust Company, Limited, is a fit and proper person to be appointed as such guardian,

It Is Hereby Ordered that Hawaiian Trust Company, Limited, be and is hereby appointed guardian of the estate of said incompetent, and that Letters of Guardianship be issued to it upon giving an approved bond in the sum of \$10,000, conditioned in accordance with law.

Dated: Honolulu, Hawaii, this 14th day of January, 1949.

[Seal]      /s/ A. M. CRISTY,  
Presiding Judge.

Certified true copy.

[Endorsed]: Filed Circuit Court, T. H., January 14, 1949. [49]

In the Circuit Court of the First Judicial Circuit,  
Territory of Hawaii

P. No. 15530

[Title of Cause.]

MOTION OF LUCY K. WARD FOR ORDER  
APPOINTING NEXT OF FRIEND OF  
HATTIE KULAMANU WARD

Comes now Lucy K. Ward, next of friend of Hattie Kalumanu Ward, and moves this Honorable Court for an Order appointing her as next of friend of Hattie Kulamanu Ward in the above-entitled proceedings, for the purpose of representing her in a motion to vacate an order appointing the Hawaiian Trust Company, Limited, Guardian of the Estate of Hattie Kulamanu Ward, or to remove said guardian, and for other relief necessary to protect the interests of said Hattie Kulamanu Ward and her estate and property.

This motion is based upon Movant's affidavit which is attached hereto and made a part hereof.

Dated: Honolulu, T. H., this 12th day of March,  
A.D. 1949.

[Seal]      /s/ LUCY K. WARD. [51]

AFFIDAVIT OF LUCY K. WARD

Territory of Hawaii,  
City and County of Honolulu—ss.

Lucy K. Ward, being first duly sworn on oath, deposes and says: That she is the sister of Hattie



Kulamanu Ward and has for many years been her attorney-in-fact in the management of her affairs; that in order to protect said Hattie Kulamanu Ward and her estate and property, it is necessary to present to this court a motion to vacate the order appointing the Hawaiian Trust Company, Limited, guardian of the Estate of Hattie Kulamanu Ward, or to remove said guardian, and for other relief; that Hattie Kulamanu Ward has good grounds for said motion; that Hattie Kulamanu Ward is, because of age and physical condition of health, and the action of this court in adjudicating her incompetent, unable to represent herself in this matter, and it is necessary for a next of friend to be appointed for said Hattie Kulamanu [52] Ward for the purpose of bringing said motion for the removal of the Hawaiian Trust Company, Limited, as guardian of the Estate of Hattie Kulamanu Ward; that these proceedings being adversary to said prior appointed guardian, they cannot be prosecuted by said guardian.

Dated: Honolulu, T. H., this 12th day of March, A.D. 1949.

/s/ LUCY K. WARD.

Subscribed and sworn to before me this 12th day of March, 1949.

[Seal]     /s/ EILEEN N. FUJIMOTO,  
Notary Public, First Judicial Circuit, Territory of  
Hawaii.

My commission expires July 31, 1951. [53]

## ORDER APPOINTING NEXT OF FRIEND

Upon the reading of the annexed motion and affidavit for an order for the appointment of next of friend, and it appearing that Hattie Kulamanu Ward is unable to represent herself in these proceedings, and that the proceedings to be filed are against the guardian of the Estate of Hattie Kulamanu Ward heretofore appointed, and that it is necessary that a proper person be appointed as next of friend for the purpose of bringing a motion for the vacation of the appointment or the removal of the Hawaiian Trust Company, Limited, as guardian of the Estate of Hattie Kulamanu Ward on behalf of said Hattie Kulamanu Ward;

It Is Hereby Ordered that Lucy K. Ward be and she is hereby appointed next of friend of said Hattie Kulamanu Ward for the purpose of making said motion to vacate and set aside the order appointing Hawaiian Trust Company, Limited, as guardian of the Estate of Hattie Kulamanu [54] Ward, or to remove said trustee.

Dated: Honolulu, T. H., this 12th day of March, A.D. 1949.

/s/ WILLSON C. MOORE,

Judge of the Above-Entitled  
Court.

Certified true copy.

[Endorsed]: Filed Circuit Court, T. H., March 12, 1949. [55]

In the Circuit Court of the First Judicial Circuit,  
Territory of Hawaii

P. No. 15530

[Title of Cause.]

MOTION OF LUCY K. WARD, SISTER, ATTORNEY-IN-FACT AND NEXT FRIEND OF HATTIE KULAMANU WARD, TO VACATE ORDER APPOINTING HAWAIIAN TRUST COMPANY, LIMITED, AS GUARDIAN OF THE ESTATE OF HATTIE KULAMANU WARD, OR TO REMOVE SAID GUARDIAN; TO HOLD FURTHER REHEARINGS RESPECTING THE ISSUES RAISED BY THE PETITION HEREIN; FOR AN ORDER TO SHOW CAUSE AGAINST LANI W. BOOTH, MELLIE E. HUSTACE AND THE HAWAIIAN TRUST COMPANY, LIMITED, AS GUARDIAN OF THE ESTATE OF HATTIE KULAMANU WARD, AND FOR A TEMPORARY RESTRAINING ORDER AGAINST THE HAWAIIAN TRUST COMPANY, LIMITED, AS GUARDIAN OF THE ESTATE OF HATTIE KULAMANU WARD, AND VERIFICATION THEREOF

#### MOTION

Comes now Lucy K. Ward, Movant, on behalf of Hattie Kulamanu Ward, and alleges:

## I.

That she is a sister of Hattie Kulamanu Ward, and resides with her at 959 South King Street, Honolulu, City and County of Honolulu, Territory of Hawaii; that she has been for many years the attorney-in-fact acting in connection with the business affairs of Hattie Kulamanu Ward, and that she has on this day applied to the Court for permission to file this motion as next friend of Hattie Kulamanu Ward, who is, at the present time, unable to act in her own behalf; that she makes this motion on behalf of Hattie Kulamanu Ward, as her sister, attorney-in-fact or next of friend.

## II.

That The Hawaiian Trust Company, Limited, is a banking corporation, organized and existing under the laws of the Territory of Hawaii, and having a principal place of [57] business in Honolulu, City and County of Honolulu, Territory of Hawaii.

## III.

That Lani W. Booth and Mellie E. Hustace are sisters of Hattie Kulamanu Ward and of this Movant, who heretofore filed in this proceeding a petition for an adjudication that Hattie Kulamanu Ward is mentally incompetent to manage her business affairs and for the appointment of The Hawaiian Trust Company, Limited, as Guardian of her Estate.

## IV.

That during all the times herein mentioned, Hattie Kulamanu Ward was and now is the owner of a



substantial estate in the Territory of Hawaii, including 1,230 shares of Victoria Ward, Limited, a corporation duly organized under and existing by virtue of the laws of the Territory of Hawaii, and having a principal place of business in Honolulu, City and County of Honolulu, Territory of Hawaii; that Hattie Kulamanu Ward's shares of stock constitute the most valuable asset of her estate, and represents in value a substantial portion of her estate.

## V.

That heretofore in these proceedings, pursuant to the petition filed by said Lani W. Booth and Mellie E. Hustace, and after hearing, this Court made and entered an order appointing The Hawaiian Trust Company, Limited, as Guardian of the Estate of Hattie Kulamanu Ward; that the order of this Court was made without the Court being fully apprised of the facts upon certain fraudulent misrepresentations and concealment of material facts, hereinafter more particularly set forth, that as a result, a full and fair hearing upon [58] said petition was not had, and that unless this Court vacates its order appointing The Hawaiian Trust Company, Limited, as Guardian of the Estate of Hattie Kulamanu Ward, or removes said company as said Guardian and holds further hearings for the taking of further testimony respecting the issues raised by the petition herein, and issues an order to show cause as against said Hawaiian Trust Company, Limited, Mellie E. Hustace and Lani W. Booth, directing them to show cause why the order appointing

Hawaiian Trust Company, Limited, should not be vacated or said company removed as such Guardian, that irreparable injury will result to Hattie Kulamanu Ward and to her estate because of the conflict of interests of said Hawaiian Trust Company, Limited, and persons and interests represented and advised by it, and the interests of Hattie Kulamanu Ward and her estate, including her interest as a shareholder in Victoria Ward, Limited, which is hereinafter more particularly described.

## VI.

That Movant is informed and believes that Mellie E. Hustace and Lani W. Booth, petitioners herein, and Edward Hustace, who appeared as a witness on behalf of said petitioners, did not disclose to this Court facts necessary for this Court to be advised of the degree of competence of Hattie Kulamanu Ward and business interests of Hattie Kulamanu Ward and her estate, and the suitability of continuing the present management of her estate by Movant; that certain fraudulent misrepresentations were made to this Court by said Edward Hustace in support of said petition; that the purpose of the filing of the petition herein by said [59] petitioners was not to conserve, in the interest of Hattie Kulamanu Ward, her property and estate, but to gain control, through the appointment of a trustee acceptable to to them, of Victoria Ward, Limited, in which Hattie Kulamanu Ward owns shares of stocks as aforesaid, for the personal benefit and interest of said petitioners, of Edward Hustace, grandson of petitioner,



Mellie E. Hustace, and Cenric Nourse Wodehouse, and for the purpose of removing from office the present officers of Victoria Ward, Limited, who have for many years managed its affairs profitably to its stockholders, including Hattie Kulamanu Ward, and for the purpose of placing in office persons acceptable to them, including Edward Hustace, whose unfitness and incompetence to manage or participate in the management of Victoria Ward, Limited, has already been proven, as more particularly hereinafter set forth; that said petitioners sought the appointment of Hawaiian Trust Company as Guardian of said estate because said Hawaiian Trust Company is friendly to them and their purpose, and can, by voting the stock of Hattie Kulamanu Ward as the Guardian of her estate, together with the stock of petitioners and the persons named above, control a majority of stock of Victoria Ward, Limited; that the removal of the present officers and directors of Victoria Ward, Limited, will be to the detriment of the rights and estate of Hattie Kulamanu Ward and no financial benefit will result from the removal of the present management of Victoria Ward, Limited.

## VII.

Upon information and belief, Movant alleges that unless the relief prayed herein is granted, the purpose of the petitioners to gain control of Victoria Ward, Limited, [60] and the removal of the present management of said company will be accomplished because of the facts hereinafter alleged and in the manner hereinafter described.

## VIII.

That Victoria Ward, Limited, is a family corporation in which all the stockholders are children of Victoria Ward, or children of deceased children; that there are outstanding 5,200 shares of stock of the par value of \$100.00 each; that the stock of Victoria Ward, Limited, is owned as follows:

Hattie Kulamanu Ward, daughter of	
Victoria Ward.....	1,230 shares
Cenric Nourse Wodehouse, son of Mae	
Wodehouse, deceased daughter of	
Victora Ward.....	642 shares
Lani W. Booth, daughter of	
Victoria Ward.....	874 shares
Mellie E. Hustace, daughter of	
Victoria Ward.....	10 shares
Kathleen Ward, daughter of	
Victoria Ward.....	1,222 shares
Lucy K. Ward, daughter of	
Victoria Ward.....	1,222 shares

that the present officers and directors of Victoria Ward, Limited, are as follows:

Victoria Kathleen Ward, President and Director.  
 Henry C. Hapai, Vice-President and Director.  
 William D. Holt, Secretary and Director.  
 Lucy K. Ward, Treasurer and Director.  
 Hattie Kulamanu Ward, Director.

## IX.

That the petitioners herein, Lani W. Booth and Mellie E. Hustace, own sufficient stock in Victoria Ward, Limited, [61] together with Cenric Nourse

Wodehouse who, Movant on information and belief alleges, will vote with petitioners and The Hawaiian Trust Company, Limited, as Guardian of the Estate of Hattie Kulamanu Ward, to remove the present officers and managers of Victoria Ward, Limited, having a 356-vote margin over the stock owned by Victoria Kathleen Ward, President and Director of Victoria Ward, Limited, and Lucy K. Ward, Treasurer and Director of said company, and present managers of said company, together with Henry C. Hapai, Vice-President and Director, and William D. Holt, Secretary and Director.

### X.

That Movant is informed and believes that the stock owned by Cenric Nourse Wodehouse, as well as his other property and estate, is managed by The Hawaiian Trust Company, Limited, on his behalf; that as a result of the ownership and control of stock as aforesaid, The Hawaiian Trust Company, Limited, can control Victoria Ward, Limited, acting with the petitioners as aforesaid.

### XI.

That the petitioner, Mellie E. Hustace, for a considerable period of time prior to June, 1946, sought to have Movant herein and the other managing directors of Victoria Ward, Limited, employ her grandson, Edward Hustace, to work for the corporation; that by reason of said entreaties, the managing directors did, in June, 1946, employ Edward Hustace to work for Victoria Ward, Limited; that Edward Hustace, who testified herein as a witness in support



of petitioners and in support of the appointment of [62] The Hawaiian Trust Company as Guardian of the Estate of Hattie Kulamanu Ward, falsely represented to this Court that he was employed to manage Victoria Ward, Limited; that during the term of his employment, Edward Hustace was employed in the Ala Moana Market Center, a division of Victoria Ward, Limited; that in such position he failed to keep proper records and accounts; that he incurred debts and obligations without authority; that as a result of his mismanagement and unauthorized actions, considerable loss resulted to Victoria Ward, Limited, and he was discharged by the Board of Directors on November 30, 1948; on information and belief, Movant alleges that when Edward Hustace was advised prior to that date that he was to be discharged, he persuaded petitioner Mellie E. Hustace and his aunt, Lani W. Booth, to file these proceedings to gain control of the corporation by gaining control of the stock of Hattie Kulamanu Ward; that Edward Hustace, while he was employed by said corporation, drew up a plan of reorganization calling for the removal of the present officers and his appointment as manager, which Movant on information and belief alleges it is the intention of petitioners to put into effect, unless this Court grants the relief herein prayed.

## XII.

Upon information and belief, Movant says that The Hawaiian Trust Company, Limited, heretofore appointed by this Court as Guardian of the Estate of Hattie Kulamanu Ward, represents other indi-

viduals and interests antagonistic to and conflicting with the interests of the estate of Hattie Kulamanu Ward and with her interest as a substantial shareholder in Victoria [63] Ward, Limited; that these antagonistic and conflicting interests were not revealed and disclosed to the Court at the time the Court made and entered its order herein appointing said Hawaiian Trust Company, Limited, Guardian of said estate; that some of the conflicting interests are hereinafter described.

### XIII.

That The Hawaiian Trust Company, Limited, represents other interests and estates which at the present time have leases with Victoria Ward, Limited.

### XIV.

Movant alleges on information and belief that Robertson, Castle & Anthony, attorneys for the petitioners, Mellie E. Hustace and Lani W. Booth, who represented them in this petition, are the regularly employed attorneys for The Hawaiian Trust Company, Limited, and are now and will continue to act as attorneys for The Hawaiian Trust Company, Limited, in the affairs of that company as Guardian of the Estate of Hattie Kulamanu Ward, unless the relief herein prayed is granted; that a confidential relationship therefore exists between the petitioners who procured the appointment of The Hawaiian Trust Company, Limited, as said Guardian, and that by reason of the plans of said petitioners to control said estate, there is a conflict of interest between the

petitioners, their counsel and The Hawaiian Trust Company, Limited, and the same counsel and the rights and interest of Hattie Kulamanua Ward.

#### XV.

Movant alleges on information and belief that a Mr. [64] Cameron, who is employed by The Hawaiian Trust Company, Limited, is now or has been the adviser of the petitioner Lani W. Booth, and has assisted her in the management of her property and in making her tax returns; that the petitioner, Lani W. Booth, owns 162 shares of stock in the Hawaiian Trust Company, Limited; that said petitioner did not, in the hearing on the petition, advise the Court of this fact.

#### XVI.

That the guardian ad litem appointed by the Court for Hattie Kulamanu Ward advised the Court that conflicting interests between the interest of the Estate of Hattie Kulamanu Ward "would arise principally because of the fact that the property owned by the corporation would be property that might be leased to interests which The Hawaiian Trust Company, Limited, might otherwise represent"; that the Court was not apprised of the ownership of stock in said company by the petitioners who sought the appointment of said Company.

#### XVII.

Movant further alleges on information and belief that the fact that the petitioner, Mellie E. Hustace, who sought the appointment of The Hawaiian Trust



Company, Limited, owns 62 shares of stock in said Company, was not disclosed to the Court.

### XVIII.

Movant further alleges on information and belief that The Hawaiian Trust Company, Limited, manages and acts for Cenric N. Wodehouse, who owns 642 shares of stock of Victoria Ward, Limited, and that said Cenric N. Wodehouse owns 62 shares of stock in said Hawaiian Trust Company, Limited; that the father of Cenric N. Wodehouse, Ernest [65] H. Wodehouse owns 1,150 shares of stock in said Hawaiian Trust Company, Limited, and is now and has been for many years a director of said Hawaiian Trust Company, Limited.

### XVIX.

Movant further alleges that The Hawaiian Trust Company, Limited, as Guardian of the Estate of Hattie Kulamanu Ward, has informed her that the said Hawaiian Trust Company, Limited, intends to have one of its officers placed on the Board of Directors of Victoria Ward, Limited; that the interests of said Hawaiian Trust Company, Limited, are in conflict with and antagonistic to the interests of Hattie Kulamanu Ward, and it would not be to the interest of said Hattie Kulamanu Ward or her estate, or to the interest of Victoria Ward, Limited, to whose interests said Trust Company's interests are also antagonistic, to have an officer of said Trust Company on the Board of Directors of Victoria Ward, Limited, or to act for said company or to have control of the stock of Hattie Kulamanu Ward therein.

## XX.

That the regular annual meeting of stockholders of Victoria Ward, Limited, takes place on Monday, March 14, 1949, and that it is not in the interest of the estate of Hattie Kulamanu Ward that The Hawaiian Trust Company, Limited, be permitted to vote said stock because of the conflict of interest heretofore referred to, and that if The Hawaiian Trust Company, Limited, is not restrained by this Court from voting said stock pending a hearing on this motion and order to show cause, irreparable injuries will result to the estate of Hattie Kulamanu Ward and her interest as [66] a stockholder in Victoria Ward, Limited; on information and belief, Movant alleges that at said meeting, petitioners and said Hawaiian Trust Company, Limited, intend to remove the present management of said company; that such removal is not in the interest of the estate of Hattie Kulamanu Ward or of Victoria Ward, Limited, in which she owns stock; that there is no adequate remedy at law or otherwise, whereby Hattie Kulamanu Ward's estate can be protected unless a temporary restraining order is issued against The Hawaiian Trust Company, Limited, prohibiting it from voting the stock of Hattie Kulamanu Ward at said meeting pending hearing and determination of the matters set forth in this motion.

## XXI.

That Movant and the other directors and officers have managed Victoria Ward, Limited, profitably for many years; that they are thoroughly familiar with

the affairs of the corporation and it would be detrimental to the interest of Hattie Kulamanu Ward to change management at this time; that under their management, the assets of the estate have constantly increased and the profits of the company have increased; that from authorized capital stock of Ten Thousand Dollars (\$10,000.00), when the corporation was formed in the year 1930, the worth of the corporation has increased until its book value as of December 31, 1948, is \$709,281.95; that this book value is far less than its true cash or market value today since the real property and improvements thereon are carried at tax appraised value; that the cash market value of the corporation today is in excess of \$1,000,000; that the net profits of the company have increased constantly; [67] that as of December 31, 1933, the income of said company was \$25,408.92; that as of December 31, 1948, for the preceding year, its income was \$239,470.11.

## XXII.

That Movant has for many years been the attorney-in-fact and manager of the property of Hattie Kulamanu Ward, who has always entrusted Movant with her business affairs; that under the management of Movant, the income of the estate of Hattie Kulamanu Ward has increased from \$4,011.14 in the year ending December 31, 1933, to \$37,097.64 in the year ending December 31, 1948; that Movant does not now have nor has she ever had any interest in conflict with Hattie Kulamanu Ward; that she has lived all her life with her sister at their present



residence on King Street, and has the confidence, love and trust of Hattie Kulamanu Ward; that she has expended the same care in the management of the property of Hattie Kulamanu Ward as she has of her own estate; that at the present time and for many years past, Hattie Kulamanu Ward has been a substantial beneficiary under her will.

### XXIII.

That a full and complete hearing to determine the degree of competency of Hattie Kulamanu Ward and the necessity and desirability of appointing a trustee of her estate has not been had; that Hattie Kulamanu Ward has never managed her business affairs, but has entrusted their management to others in whom she reposes trust and confidence; that it is an injustice and not in her interest and welfare that in the declining years of her life she be subjected to changes in the management of her affairs, and the humiliation [68] of these proceedings which disturb and upset her physical health and mental happiness; that Movant, Hattie Kulamanu Ward and Kathleen Victoria Ward have lived in harmony and with love, affection, trust and confidence all the years of their lives; that they reside and have always resided in their present residence.

### XXIV.

If after a full and complete hearing, the Court determines that it is necessary to appoint a guardian of the estate of Hattie Kulamanu Ward, it would be to her best interests in every way that either

Movant or Kathleen Victoria Ward, in whom she has had confidence all her life, should be selected.

### XXV.

That The Hawaiian Trust Company, Limited, because of the facts hereinbefore set forth, is not a suitable Guardian of the Estate of Hattie Kulamanu Ward, because of conflicting and antagonistic interests to the rights of Hattie Kulamanu Ward.

### XXVI.

That if, after full hearing, the Court determines that it is in the interest of Hattie Kulamanu Ward that a guardian of her estate be appointed, and that neither Movant nor Victoria Kathleen Ward are suitable, it would be in the interest of Hattie Kulamanu Ward that a disinterested person, familiar with her affairs, be appointed.

### XXVII.

That unless an order to show cause is directed by this Court against The Hawaiian Trust Company, Limited, directing it to show cause why it should not be removed as Guardian [69] of the Estate of Hattie Kulamanu Ward, irreparable injury will result to the estate and property of Hattie Kulamanu Ward; that there is no adequate remedy at law or otherwise to protect the interest of Hattie Kulamanu Ward except this proceeding, and unless after full hearing of said order to show cause, The Hawaiian Trust Company, Limited, is removed as Guardian of said Estate.



Wherefore, Movant prays this Honorable Court:

1. That orders issue out of and under the seal of this Honorable Court, as provided by law, directed to The Hawaiian Trust Company, Limited, Mellie E. Hustace and Lani W. Booth, ordering them to appear 4 days from the date of the filing of this motion and at a place designated by the Court, and then and there to show cause, if any they have, why the order appointing Hawaiian Trust Company, Limited, as Guardian of the Estate of Hattie Kulamanu Ward, should not be vacated or said Guardian removed, why further hearings respecting the issues raised by the petition herein should not be held; and

2. That pending hearing on such order to show cause, a temporary restraining order without notice, restraining and prohibiting The Hawaiian Trust Company, Limited, from voting the stock of Hattie Kulamanu Ward in Victoria Ward, Limited, at the annual meeting of stockholders of Victoria Ward, Limited, on March 14, 1949, be issued by this Court; and

3. That after full hearing on the order to show cause, this Court make and enter its order vacating the appointment of Hawaiian Trust Company, Limited, as Guardian of the Estate of Hattie Kulamanu Ward or remove said company [70] as Guardian, and if the Court finds it necessary, to appoint a suitable trustee for the estate of Hattie Kulamanu Ward; and

4. For such other and further relief as this Honorable Court may deem just in the premises.

Dated: Honolulu, T. H., this 12th day of March,  
A.D., 1949.

/s/ LUCY K. WARD,  
Sister, attorney-in-fact and next of kin of friend of  
Hattie Kulamanu Ward.

Territory of Hawaii,  
City and County of Honolulu—ss.

Lucy K. Ward, being first duly sworn, deposes  
and says that she has read the foregoing petition,  
knows the contents thereof, and that the allegations  
contained therein are true and correct except as to  
those allegations made on information and belief,  
and as to those matters, she believes them to be true.

/s/ LUCY K. WARD.

Subscribed and sworn to before me this 12th day  
of March, 1949.

[Seal] /s/ EILEEN N. FUJIMOTO,  
Notary Public, First Judicial Circuit, Territory of  
Hawaii.

My commission expires July 31, 1951.

Certified true copy.

[Endorsed]: Filed Circuit Court, T. H., March  
12, 1949. [71]

In the Circuit Court of the First Judicial Circuit,  
Territory of Hawaii

P. No. 15530

[Title of Cause.]

## ORDER TO SHOW CAUSE AND TEMPORARY RESTRAINING ORDER

Upon the reading, filing and consideration of the verified motion herein praying for an order directed to The Hawaiian Trust Company, Limited, as Guardian of the Estate of Hattie Kulamanu Ward, Mellie E. Hustace and Lani W. Booth to appear and show cause why an order vacating the appointment of said Hawaiian Trust Company, Limited, as Guardian of the Estate of Hattie Kulamanu Ward, or to remove said guardian, should not be issued, and further hearings held herein on the issues raised by the petition heretofore filed herein, and further praying that pending the hearing of said Order to Show Cause, a Temporary Restraining Order be issued herein without notice, and

It appearing to the Court from said motion that if a Temporary Restraining Order is not granted without notice, The Hawaiian Trust Company, Limited, as Guardian of the Estate of Hattie Kulamanu Ward, will vote the shares of stock of Victoria Ward, Limited, held by said estate, at [72] the annual meeting of stockholders to be held on Monday, March 14, 1949, to the detriment of said estate, before this Court can determine on the merits the right of Movant to the relief prayed, thereby caus-

ing great and irreparable injury to Hattie Kulamanu Ward, and the Court being fully advised in the premises and it being a proper case for this order,

It Is Hereby Ordered that The Hawaiian Trust Company, Limited, Mellie E. Hustace and Lani W. Booth be and they are hereby ordered to appear before the undersigned Judge at his courtroom, Honolulu, T. H., on the 16th day of March, 1949, at the hour of 9:00 a.m., to show cause if any they have why the relief prayed for should not be granted.

It is further ordered that pending the hearing of said Order to Show Cause, said Hawaiian Trust Company, Limited, as Guardian of the Estate of Hattie Kulamanu Ward, be and it is hereby restrained and enjoined until the further order of this Court from voting the stock belonging to the Estate of Hattie Kulamanu Ward in Victoria Ward, Limited, at the annual meeting of stockholders on Monday, March 14, 1949, or otherwise.

It is further ordered that a copy of this order together with the motion be served upon The Hawaiian Trust Company, Limited, as Guardian of the Estate of Hattie Kulamanu Ward, Mellie E. Hustace and Lani W. Booth at least 2 days prior to the 16th day of March, 1949.

Dated: March 12, 1949, at . . . . .m., at Honolulu, T. H.

[Seal]      /s/ WILLSON C. MOORE,

Judge of the Above Entitled  
Court. [73]



## Officer's Return

Served the within motion to vacate order appointing Hawaiian Trust Company, Limited, guardian; Order to Show Cause and Temporary Restraining Order on Hawaiian Trust Company, Limited, through A. F. Mahn, its vice-president and treasurer; Mellie E. Hustace, through Mr. Frank Hustace, Jr. (Heen, Kai & Stephenson), who accepted service on her behalf; and Lani W. Booth through Mr. Garner Anthony (Robertson, Castle & Anthony), who accepted service on her behalf, at Honolulu, Oahu, T. H., this 14th day of March, 1949, by delivering to each of them a true and attested copy thereof and at the same time showing them the original.

Dated: March 14, 1949.

/s/ JOHN YOUNG,  
Deputy Sheriff, T. H.

Certified true copy.

[Endorsed]: Filed Circuit Court, T. H., March 12, 1949. [74]



In the Circuit Court of the First Judicial Circuit,  
Territory of Hawaii

P. No. 15530

In the Matter of:

THE GUARDIANSHIP OF HATTIE KULAMANU WARD,

An Incompetent.

ORDER VACATING APPOINTMENT OF  
NEXT FRIEND; VACATING RESTRAINING  
ORDER AND DENYING MOTION FOR  
REMOVAL OF GUARDIAN

Pursuant to the oral decision of the Court rendered March 16, 1949, in the above cause, It Is Hereby Ordered:

(1) That the order entered March 12, 1949, appointing Lucy K. Ward as next friend of Hattie Kulamanu Ward, an incompetent person, is hereby vacated;

(2) That the temporary restraining order entered March 12, 1949, enjoining Hawaiian Trust Company, Limited, guardian of the Estate of Hattie Kulamanu Ward from voting the shares of stock belonging to said incompetent in Victoria Ward, Limited, is hereby vacated;

(3) That the motion of Lucy K. Ward for the removal of Hawaiian Trust Company, Limited, as guardian is hereby denied.

(4) That Lucy K. Ward pay counsel fees for

Hawaiian Trust Company, Limited, guardian of Hattie Kulamanu [76] Ward in this proceeding in the sum of \$100, together with costs.

Dated: Honolulu, Hawaii, March 17, 1949.

[Seal]       /s/ A. M. CRISTY,  
                                Presiding Judge.

Attest:

              /s/ WILLIAM C. ING,  
                                Clerk.

Certified true copy.

[Endorsed]: Filed Circuit Court, T. H., March 17, 1949. [77]

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In the Circuit Court of the First Judicial Circuit,  
Territory of Hawaii

P. No. 15530

[Title of Cause.]

### APPEAL AND NOTICE OF APPEAL

Comes now the petitioner Lucy K. Ward, next of friend of Hattie Kulamanu Ward, the above-named incompetent, by her counsel, and hereby gives notice of appeal and does hereby appeal to the Supreme Court of the Territory from the order of the Honorable A. M. Cristy in the above-entitled cause, vacating her appointment as next friend, vacating restraining order, and denying motion for removal of guardian entered on the 17th day of March, 1949, against Hattie Kulamanu Ward by Lucy K. Ward, next of friend.

Dated: Honolulu, T. H., this 25th day of March, 1949.

LUCY K. WARD,  
Next of Friend of Hattie Kulamanu Ward, Petitioner herein,

By BOUSLOG & SYMONDS,  
By /s/ HARRIET BOUSLOG,  
Her Attorney.

Receipt of copy acknowledged.

Certified true copy.

[Endorsed]: Filed Circuit Court, T. H., March 25, 1949. [79]

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In the Supreme Court of the Territory of Hawaii  
No. 2762

Error to the Circuit Court, First Judicial Circuit, the Honorable Albert M. Cristy, at Chambers in Probate Proceedings.—Probate No. 15530.

In the Matter of:

THE GUARDIANSHIP OF HATTIE KULAMANU WARD,

An Incompetent.

### WRIT OF ERROR

The Territory of Hawaii, Greeting:

To the Clerk of the Circuit Court of the First Judicial Circuit, Territory of Hawaii:

Application having been made on behalf of Lucy

K. Ward, next of friend of Hattie Kulamanu Ward, and Lucy K. Ward and Kathleen Ward, intervenors, for a writ of error in the above-entitled cases, you are commanded forthwith to send to the Supreme Court the record in said cases.

Witness, the Honorable S. B. Kemp, Chief Justice of the Supreme Court of the Territory of Hawaii, this 13th day of April, 1949.

[Seal]

LEOTI V. KRONE,

Clerk of the Supreme Court.

To the Clerk of the Supreme Court:

The execution of the within writ of error appears by the record hereto annexed.

Dated: Honolulu, T. H., this 29th day of April, 1949.

[Seal]

/s/ MARGARET K. HEINE,

Clerk, Circuit Court, First Judicial Circuit, Territory of Hawaii.

Certified true copy.

[Endorsed]: Filed Supreme Court, T. H., April 13, 1949. [81]



In the Supreme Court of the Territory of Hawaii  
No. 2762

[Title of Cause.]

### ASSIGNMENTS OF ERROR

1. The Circuit Judge at Chambers erred in appointing the Hawaiian Trust Company, Ltd., as Guardian of the Estate of Hattie Kulamanu Ward in that the record before him shows:

(a) That the Hawaiian Trust Company has or might have conflicting interests with the Estate of Hattie Kulamanu Ward.

(b) That the petitioning sisters of the alleged incompetent affirmatively sought the appointment of the Hawaiian Trust Company, Ltd., as Guardian, and that the application was opposed by two other sisters with equal interests and equal rights with the petitioners.

(c) That the court was advised at the time of said appointment that a family difference of opinion in respect to the control of the family corporation, in which the alleged incompetent owns stock, was involved in the proceedings for the appointment of the Hawaiian Trust Company as Guardian of the Estate, and that the appointment of such Guardian would or might give to petitioners' side of the family control of the corporation. [83]

2. That the Circuit Judge at Chambers abused his discretion in appointing the Hawaiian Trust Company, Ltd., as Guardian of the Estate of Hattie Kulamanu Ward, on the basis of the record before him.



3. That the Circuit Judge at Chambers erred in refusing to permit counsel for intervenors to question petitioners and witnesses supporting the petition concerning the motive of petitioners in seeking to have a guardian appointed for the alleged incompetent, and in sustaining objections to this line of questions.

4. That the Circuit Judge at Chambers erred in refusing to permit testimony as to the interest of petitioners and their motives in seeking the appointment of the Hawaiian Trust Company, Ltd., and sustaining objections to this line of questions.

5. That the Circuit Judge at Chambers erred in holding as a matter of law that Lucy K. Ward and Kathleen Ward were unsuitable guardians because, as a matter of law, their interests were conflicting, or alternately

6. If all sisters of the alleged incompetent had conflicting interests as a matter of law, the Circuit Judge at Chambers erred in appointing a guardian satisfactory to the petitioning sisters and unsatisfactory to Lucy K. Ward and Kathleen Ward, intervening sisters, who had equal interest, particularly in view of the fact that the stock of alleged incompetent would give petitioners control of a family corporation, in which the alleged incompetent owns substantial stock.

7. That the Circuit Judge at Chambers erred in vacating the order appointing Lucy K. Ward next of friend of [84] Hattie Kulamanu Ward, in vacating a temporary restraining order issued, and refus-

ing to hold hearing on an injunction pending the outcome of the litigation, and in denying the motion for the removal of the Hawaiian Trust Company, Ltd., as Guardian of the Estate of Hattie Kulamanu Ward, without permitting hearing on the petition of Lucy K. Ward as next of friend of Hattie Kulamanu Ward.

8. That the Circuit Judge at Chambers erred in denying a hearing on the motion to remove the Hawaiian Trust Company, Ltd., as guardian of the trustee on the ground that it was unsuitable and had conflicting interests with the estate of the alleged incompetent, in that, as a matter of law, petitioner was entitled to a hearing on the motion to remove the guardian.

9. That the Circuit Judge at Chambers erred in denying a hearing on the merits of the motion of Lucy K. Ward, as next of friend of Hattie Kulamanu Ward, to remove the Hawaiian Trust Company, Ltd., as Guardian of the Estate of Hattie Kulamanu Ward, since the motion of petitioner stated grounds in her verified complaint entitling her to a hearing and to the relief prayed.

10. That on the basis of the verified petition and the record before him, the Circuit Judge at Chambers abused his discretion in denying a hearing on the motion to vacate the order appointing the Hawaiian Trust Company, Ltd., as Guardian of the Estate of Hattie Kulamanu Ward and in reopening the proceedings for the taking of further evidence.

11. That the Circuit Judge at Chambers, in [85]

the course of the hearing of the motion to remove the Hawaiian Trust Company as Guardian of the Estate of Hattie Kulamanu Ward, manifested such strong bias and prejudice against petitioner Lucy K. Ward, as next of friend of Hattie Kulamanu Ward, and against her counsel, by abusive and intemperate charges, unwarranted and unjustified by any evidence before him; that petitioner was denied due process of law and a full and fair hearing on her petition on behalf of Hattie Kulamanu Ward to remove Hawaiian Trust Company as Guardian of the Estate of Hattie Kulamanu Ward, and further manifested such bias and prejudice in favor of the Hawaiian Trust Company and petitioners as to deny petitioner due process of law and a full and fair hearing.

Wherefore, the petitioners, Lucy K. Ward, as next of friend of Hattie Kulamanu Ward, and Lucy K. Ward and Kathleen Ward, intervenors, pray that the order appointing Hawaiian Trust Company as Guardian of the Estate of Hattie Kulamanu Ward, made and entered by the said judge on January 13, 1949, be reversed, and that petitioner, Lucy K. Ward, as next of friend of Hattie Kulamanu Ward, be granted a hearing on her motion to vacate the order appointing Hawaiian Trust Company, Ltd., as Guardian of the Estate of Hattie Kulamanu Ward, to remove said Guardian, to hold further hearings respecting the issues raised by the petition, and for a restraining order against the Hawaiian Trust Company as Guardian of the Estate of Hattie Kulamanu Ward, pending the determination of the

issues at said hearing, and that [86] petitioners be granted such other and further relief as may be meet and proper in the premises.

Dated: Honolulu, T. H., this 13th day of April, 1949.

LUCY K. WARD,

Next of Friend of Hattie Kulamanu Ward, Lucy K.  
Ward and Kathleen Ward, Intervenors,

By BOUSLOG & SYMONDS,

By /s/ HARRIET BOUSLOG,

Their Attorneys.

Certified true copy.

[Endorsed]: Filed Supreme Court, T. H., April  
13, 1949. [87]

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In the Supreme Court of the Territory of Hawaii  
No. 2762

[Title of Cause.]

### STIPULATION

It is hereby stipulated that the documents and records filed in this Court pursuant to the Amended Praecipe in the appeal of Lucy K. Ward, next of friend of Hattie Kulamanu Ward, in the matter of the guardianship of Hattie Kulamanu Ward, an incompetent, in the Circuit Court of the First Judicial Circuit, at Chambers in Probate, from the order of the Honorable A. M. Cristy, presiding judge, vacating her appointment as next of friend, vacating a temporary restraining order issued therein, and denying her motion for removal of guardian, are



the same documents and records required to be filed in this Court by the Praecipe in this writ of error proceeding, and that the documents and records in that appeal may be incorporated herein by reference without requiring duplication thereof, and may be made a part of the records herein as fully as if actually set forth.

Dated: Honolulu, T. H., this 25th day of April, 1949.

/s/ J. GARNER ANTHONY,  
Attorney for Hawaiian Trust Company, Ltd.,  
Guardian of the Estate of Hattie [89] Kula-  
manu Ward, and Lani W. Booth, and Mellie E.  
Hustace, Petitioners.

/s/ HARRIET BOUSLOG,  
Attorney for Lucy K. Ward, Next of Friend of  
Hattie Kulamanu War, and Lucy K. Ward,  
and Kathleen Ward, Petitioners Herein.

The foregoing stipulation is approved and it is hereby ordered that the documents and records heretofore filed in the above-mentioned appeal may be incorporated by reference as the documents and records required by the Praecipe herein.

Dated: Honolulu, T. H., this 25th day of April, 1949.

[Seal] /s/ S. B. KEMP,  
Chief Justice.

Certified true copy.

[Endorsed]: Filed Supreme Court, T. H., April 25, 1949. [90]

In the Supreme Court of the Territory of Hawaii

Nos. 2761 and 2762

[Title of Cause].

### STIPULATION FOR CONSOLIDATION

It is hereby stipulated by and between the appellants, Lucy K. Ward, next of friend of Hattie Kulamanu Ward, and Lucy K. Ward and Kathleen Ward, intervenors, by their attorneys, Bouslog & Symonds, and by The Hawaiian Trust Company, Ltd., Guardians of the Estate of Hattie Kulamanu Ward, Lani W. Booth and Mellie E. Hustace, by their attorneys, Robertson, Castle & Anthony, that the above-entitled causes may be consolidated for the purpose of briefing and hearing.

Dated: Honolulu, T. H., this 12th day of [92] May, 1949.

LUCY K. WARD,

Next of Friend of Hattie Kulamanu Ward, and  
Lucy K. Ward and Kathleen Ward, Inter-  
venors,

By BOUSLOG & SYMONDS,  
Their Attorneys,

By /s/ HARRIET BOUSLOG.

HAWAIIAN TRUST  
COMPANY, LTD.,

Guardian of the Estate of Hattie Kulamanu Ward,  
and Lani W. Booth and Mellie E. Hustace, Peti-  
tioners,

By ROBERTSON, CASTLE &  
ANTHONY,  
Their Attorneys,

By /s/ J. GARNER ANTHONY.

Approved:

[Seal]      /s/ S. B. KEMP,  
Chief Justice.

Certified true copy.

[Endorsed]: Filed Supreme Court, T. H., May  
12, 1949. [93]

In the Supreme Court of the Territory of Hawaii  
October Term, 1950

Nos. 2761 and 2762

In the Matter of:

THE GUARDIANSHIP OF HATTIE KULAMANU WARD,

An Incompetent.

Appeal from Circuit Judge First Circuit, and  
Error to Circuit Judge First Circuit

Hon. A. M. Cristy, Judge.

### OPINION

Argued January 10, 1951.

Decided February 2, 1951.

Le Baron and Towse, JJ., and Circuit Judge Corbett in place of Kemp, C. J., Retired.

Constitutional Law—construction—Seventh  
Amendment

The Seventh Amendment of the Constitution does not apply to guardianship proceedings in insanity cases.

Statutes—construction—section 12529 of Revised Laws of Hawaii 1945—ground for removal of duly appointed guardian.

Section 12529 of Revised Laws of Hawaii, 1945, operates in futurity from time of appointment of



a guardian. It grants discretionary authority to remove a duly appointed guardian and specifies an alternative ground for removal as the exclusive cause on which [94] he may be removed but that cause can only have its being in events occurring after his appointment and showing that he no longer is sane or otherwise capable of or suitable for discharging his trust duties.

Appeal and Error—presentation and reservation in lower court of grounds of review—issues and questions in lower court—necessity of presentation in general.

Questions not properly raised and preserved below and alleged errors of law or alleged abuses of discretion not called to the attention of the trial judge or made the subject of objection and exception at the time they were purportedly committed need not be considered by an appellate court unless it is of the opinion that manifest error patently appears on the record injuriously affecting substantial rights of appellant on writ of error.

Same—review—discretion of lower court—proceedings after judgment—refusal to hear motion to vacate on its merits.

To grant or deny a hearing on the merits of a motion to vacate an order appointing a guardian is within the sound discretion of the presiding judge and his denial thereof should not be disturbed unless clearly an abuse of discretion. [95]

## Opinion of the Court by Le Baron, J.

This is a writ of error sued out jointly by Lucy K. Ward and Kathleen Ward as intervenors, and individually by Lucy K. Ward as next friend of their sister Hattie Kulamanu Ward. Consolidated with the writ in this court is an appeal by the said Lucy K. Ward as next friend of the said Hattie Kulamanu Ward. The writ stems from two sets of proceedings below. One set is that of original guardianship proceedings instituted by petition of Lani W. Booth and Mellie E. Hustace, also sisters of Hattie Kulamanu Ward, for the appointment of a guardian of her estate on the ground of incompetency on her part to manage such estate. The other is that of proceedings, subsequent to the appointment of the guardian in the original guardianship proceedings, instituted by motion of Lucy K. Ward, as next friend to vacate the order of appointment or to remove such guardian. The appeal stems from the subsequent proceedings only.

The petition for appointment of a guardian in the original guardianship proceedings named Lucy K. Ward as attorney-in-fact of the alleged incompetent. Notice was served on the alleged incompetent on the filing of the petition. Thereafter an attorney at law was appointed for her as guardian ad litem. At a hearing before the probate judge at chambers without a jury, the alleged incompetent was not present, but represented by the guardian ad litem. Lucy K. Ward and Kathleen Ward as intervenors were not present but both were represented by respective attorneys. The petitioners appeared with

their attorneys. Evidence of insanity at the hearing was [96] undisputed and proved to the judge's satisfaction that Hattie Kulamanu Ward is mentally incapable of managing her estate. On evidence of suitability the probate judge found that Hawaiian Trust Company, Limited, is "a fit and proper person to be appointed" as guardian of her estate. After the hearing the probate judge entered an order appointing Hawaiian Trust Company, Limited, guardians of the incompetent's estate. Accordingly, letters of guardianship were issued to the guardian upon it giving an approved bond in the sum of \$10,000, conditioned in accordance with law. Ever since so qualifying Hawaiian Trust Company, Limited, has been the legally constituted guardian of the incompetent's estate.

In the subsequent proceedings Lucy K. Ward, during the absence of the probate judge who had presided in the original guardianship proceedings, petitioned a different probate judge for the appointment of herself as next friend of the incompetent "for the purpose of representing her in a motion to vacate an order appointing Hawaiian Trust Company, Limited, Guardian of the Estate of Hattie Kulamanu Ward or to remove such guardian and for other relief necessary to protect the interests of said Hattie Kulamanu Ward and her estate and property." For such purposes that probate judge appointed Lucy K. Ward as next friend of the incompetent. Pursuant thereto, Lucy K. Ward in that capacity filed a motion to vacate the order appointing the guardian or to remove such guardian and



to rehear the issues previously determined by such order as well as to protect the interests of the incompetent pending disposition of the motion. [97] That motion contained two main prayers. One is for an order to compel the guardian and the petitioners in the original guardianship proceedings to show cause why the order appointing the guardian should not be vacated or, as an alternative, why the guardian should not be removed. The other is for a temporary restraining order without notice to prevent the guardian from voting stock of the incompetent pending disposition of the motion to vacate or to remove. Upon reading the motion at the time of its filing, the judge who made the appointment of next friend granted those prayers and issued appropriate ex parte orders in accordance therewith. Before the day set therein to show cause, the guardian and petitioners filed a combined answer and return to the motion and order to show cause, which by way of answer to the motion denied the allegations thereof, and by way of return to the order pointed to the record of the original guardianship proceedings as good cause why the guardian should not be removed. On the day set, extensive arguments on both sides were heard by the probate judge who presided in the original guardianship proceedings. At the conclusion thereof the probate judge entered an order dissolving the ex parte order of restraint and denying the motion without a hearing on its merits. From this state of the record concerning these subsequent proceedings it is evident that the underlying relief, sought by the movant and denied



by the probate judge, is to have previously determined issues reheard for the sole purpose of discharging the guardian from the trust originally imposed upon it. [98]

The writ challenges the order appointing the guardian of the incompetent's estate and in conjunction with the appeal challenges the order dissolving the ex parte order of restraint and denying the motion to vacate that order or to remove such guardian without a hearing on its merits. Those orders are challenged in eleven assignments of error. But preliminary thereto, the appellants raise for the first time on appeal the constitutional question whether or not the provisions of section 12509 of Revised Laws of Hawaii 1945, on which the jurisdiction of the probate judge in the original guardianship proceedings below is based, contravenes the Seventh Amendment of the Constitution which declares "In suits at common law, where the value in controversy shall exceed twenty dollars, the right to trial by jury shall be preserved."

The question in so far as it goes to the jurisdiction of the probate judge does not require any construction of section 12509, which in derogation of the common law clearly permits a probate judge in guardianship proceedings "after a full hearing" to adjudge an alleged incompetent to be insane and to appoint "a guardian of his person or estate or both" without the intervention of a jury. But it does require the Seventh Amendment to be interpreted as to the meaning of its clause "In suits at common law, where the value in contro-

versy shall exceed twenty dollars” with respect to guardianship proceedings in insanity cases. The appellants concede that the Supreme Court of the United States has had no occasion to interpret, and has not interpreted, that clause with respect thereto nor have they cited any clear authority of a lower court to [99] hold that guardianship proceedings in insanity cases constitute “suits at common law, where the value in controversy \* \* \* exceed[s] twenty dollars” within the meaning of the Amendment and there are apparently none to be found even though such proceedings were known to the common law long before the Amendment was adopted in 1791. From such dearth of authority a serious doubt arises that guardianship proceedings in insanity cases constitute suits at common law in which there is any value in controversy within the meaning of the Amendment. That they are not such suits is strongly indicated by the fact that there is no value therein to be brought into controversy on determining whether or not an alleged incompetent be of unsound mind and incapable of managing his own affairs. Nor can it be argued with reason that such a controversy arises when a presiding judge inquires into the amount and character of the estate of an adjudged insane person for the purpose of appointing a suitable person to manage that estate as guardian, or for that of fixing an appropriate bond, mere value of such estate not being in controversy as a subject of dispute in the cause itself for the appointment of a guardian.

Consistent with the common origin of the power of the lord chancellor as the keeper of the king's conscience to act in lieu of the king as general guardian of all infants, idiots and lunatics and of the equitable jurisdiction of courts of chancery, which grew out of the ancient practice of petitioning the king, as the fountain of justice, for relief in those particular cases where the positive law, *lex scripta*, was deficient, guardianship proceedings in insanity cases before [100] a probate judge as the successor to the lord chancellor have much in common with the civil causes in courts of equity as the successors to the courts of chancery. Although such proceedings differ generally from such causes, the particular difference to be noted for the purposes of this opinion lies in the fact that in civil causes in courts of equity the value is in controversy. Nevertheless, the two are akin in other essential characteristics. Illustrative thereof, guardianship proceedings in insanity cases are special proceedings, equitable in nature, and at common law called for a verdict of a special jury of inquiry on the issue of insanity which was merely advisory for the purpose of informing the conscience of the chancellor. (See *Barbo v. Rider*, *Guardian*, etc., 67 Wis. 598, 607; *In re Slade*, 43 N. Y. S. [2d] 281; *Sporza v. German Savings Bank*, 192 N. Y. 8, 84 N. E. 406; *Matter of Wendell*, a Lunatic, 1 Johns. Ch. 599; *Matter of Tracy*, 1 Paige 580.) This is evident from the character of the common law writs of *de idiota inquirendo* and *de lunatico inquirendo* and those in the nature



of de lunatico in issuing out of chancery on the exercise of the special jurisdiction conferred by the king's "sign manual" to the lord chancellor as the personal representative of the crown. (See *Hamilton v. Traber*, 78 Md. 26, 27 Atl. 229; *Barbo v. Rider*, *Guardian*, etc., *supra*; 1 Bl. Comm. 303, 305; 3 Bl Comm. 427; J. G. Woerner's *American Law of Guardianship* 402; § 122.) On the other hand, a special jury of inquiry in extraordinary cases is impanelled in civil causes in courts of equity to inform the court's conscience similar to the situation in guardianshp proceedings in insanity cases at [101] at common law. But the power of an equity court to do so is not regarded by the Supreme Court of the United States as "equivalent to the right of trial by jury secured by the Seventh Amendment" (*Cates v. Allen*, 149 U. S. 451, 459; see *Whitehead v. Shattuck*, 138 U. S. 146, 151.) Nor is it reasonable to suppose that the framers of the Amendment regarded an advisory jury at probate or in equity as equivalent to a binding jury at law. On the contrary, it is reasonable to assume that they had in mind the distinction between such diverse kinds of jury and used the word "jury" advisedly to denote a binding jury such as prevailed at common law in civil actions in courts of law. Clearly the Supreme Court did not deem that the term "suits at common law" within the meaning of the Amendment applied to civil causes in courts of equity or to other proceedings calling for advisory juries at common law when it declared that "By common law, they



[the framers of the Amendment] meant what the Constitution denominated in the third article 'law'; not merely suits which the common law recognized among its old and settled proceedings." (Parsons v. Bedford et al., 3 Pet. 433, 446, 447.) There are stronger reasons to say that the Amendment itself does not apply to guardianship proceedings in insanity cases than those making it inapplicable to civil causes in courts of equity, not only because the equitable nature of those proceedings and the advisory effect of the verdict in them at common law render them comparable to the character of those civil causes and to the effect of a verdict in them, but because such proceedings for the appointment of a guardian involve no value in controversy as do such civil causes. Those reasons impel this court to interpret the Amendment [102] as excluding guardianship proceedings in insanity cases as well as civil causes in courts of equity from its operation. It follows therefrom that section 12509, even though in derogation of the common law, does not contravene that inapplicable amendment of the Constitution. Perforce, the probate judge had jurisdiction and the constitutional question as preliminarily presented must be answered in the negative.

The eleven assignments of error present four questions of law. The first two questions arise only under the writ of error as presented by the first six assignments. This court will now deal with those two questions. They pertain to alleged errors or alleged abuses of discretion occurring in the origi-

nal guardianship proceedings either at the hearing on the petition for appointment of a guardian or in the appointment of the guardian. But the questions themselves were not presented for the consideration of the probate judge in those proceedings on either occasion, nor were the alleged errors or abuses called to his attention or made the subjects of objection and exception at the time they were purportedly committed. The general rule is that an appellate court will consider only such questions as were raised and properly preserved in the lower court. (For collection of authorities see 3 Am. Jur. 25, § 246, n. 15.) That rule applies to these particular questions unless this court is of the opinion that any of the alleged errors or alleged abuses patently appear on the record as a manifest error injuriously affecting substantial rights of the appellants on writ of error within the meaning of section 9564 of Revised Laws of Hawaii 1945. (See *Territory v. Chong*, 36 Haw. 537; [103] *City and County v. Tam See*, 38 Haw. 592, 602; *Wayne v. New York Life Ins. Co.*, 132 F. [2d] 28; *In re Florsheim*, 24 Fed. Supp. 991; *Taylor v. Catalon*, 140 Tex. 38, 166 S. W. [2d] 102.) But this court is not of that opinion and finds no ground of reversal. On the contrary, it finds on reviewing the record of the original guardianship proceedings that the hearing on the petition and the appointment of the guardian were held and made, respectively, in strict conformity with the provisions of section 12509 and constituted due process of law under the Fifth Amendment.

(See *In re Acherly*, 19 Haw. 535.) This court therefore will not further consider those first two questions or the writ of error in so far as the first six assignments of error are concerned even though it may have the power to do so.

There remains to be considered the last two questions of law, which are kindred and arise under both the writ and appeal as presented by the last five assignments of error. They pertain to the proceedings taken subsequently to the original guardianship proceedings. For convenience, these questions will be stated and considered separately in logical sequence. The first is stated by the appellants in the opening brief to be whether or not it was "error as a matter of law, or an abuse of discretion, to deny appellant [movant] a hearing on the merits of the motion to remove Hawaiian Trust Company, Limited, as the guardian of her estate on the ground that such guardian is unsuitable" as presented by the seventh, eighth, ninth and tenth assignments of error. In oral argument, however, the appellants divided that question into two component parts consonant to the alternative character of the motion to vacate or to remove. [104] In doing so, the question becomes a dual one, i. e., a question of "error as a matter of law" in denying a hearing on the merits of the motion as one to remove the guardian for statutory cause and a question of "an abuse of discretion" in denying a hearing on the merits of the motion as one to vacate the order appointing such guardian. For convenience, the question will be so treated in this



opinion and regarded as two distinct questions. The question of error will be first considered and then that of abuse.

In the subsequent proceedings consistently with the theory thereof, the parties at the hearing on the order to show cause argued the issue of the sufficiency of the motion's allegations to state the statutory cause for removal whereupon the probate judge in resolving that issue in the negative denied the motion without a hearing on its merits. The question of error pertains to such action on the part of the probate judge. Its answer depends on whether the allegations of the motion, if taken to be true on demurrer, are sufficient or insufficient to set forth the statutory cause for removal. Admittedly the test is to be found in the provisions of section 12529, chapter 305, Revised Laws of Hawaii 1945, as applied to the facts alleged in the motion. Those provisions, therefore, must be considered in the light of such facts.

The pertinent part of section 12529 reads: "Where any guardian, appointed either by a testator or by any of the judges hereinbefore mentioned, shall become insane or otherwise incapable of discharging his trust, or unsuitable therefor, \* \* \* any of the judges \* \* \* may remove him \* \* \*". This sentence may be paraphrased without destroying the ordinary meaning of its words and within the plain legislative intent of the section [105] to read; "Any judge, having jurisdiction over guardians under chapter 305, may remove a duly appointed guardian whenever it shall come to pass



after his appointment that he has arrived at such a state of mental deficiency or other incompetence or of unfitness that his further acting as a guardian is incompatible with a proper carrying out of the trust originally imposed upon him." Such paraphrase merely serves to illustrate in different language the meaning of the statute itself. Nevertheless, that meaning is clear from the language employed in the statute. By its terms, the statute presupposes the guardian to have been fully competent, capable and fit to perform his trust duties at the time of his appointment, but contemplates that he may not continue to be so thereafter and to meet that contingency specifies in the alternative a particular cause for removal at a future time. Operating as it does in futurity from the time of appointment, the statute thereafter gives to certain judges a purely discretionary authority, exercisable only in case a duly appointed guardian can no longer properly function as a guardian or ceases to be an appropriate guardian. Until the event of such transition, no judge has any authority to remove a guardian or any basis of right on which to exercise judicial discretion therefor. Thus the granting of authority to remove a guardian as well as the exercise of discretion thereunder is effective after the appointment of the guardian and in the event that he becomes insane or otherwise incapable of, or unsuitable for, discharging his trust duties. This is the sole alternative cause specified by the statute upon which he may be removed. Nor can he be removed except for that specific cause. (See *Estate of Atkins*, [106] 121 Cal. App. 251, 8 P. [2d]

1052; *State ex rel. Baker v. Bird*, 253 Mo. 569, 162 S. W. 119. Also *Anderson's Committee v. Anderson's Admr.*, 161 Ky. 18, 170 S. W. 213.) As a corollary thereto, the statute from the nature of that cause permits no vicarious removal of the guardian through a reversal or vacation of the order appointing him and authorizes no retrial of the issues previously determined by that order.

The motion as one to remove the guardian for the statutory cause on the ground of unsuitability is patently not predicated on that cause. It does not purport to allege that the guardian since appointment has become either incapable of, or unsuitable for, discharging its trust duties within the meaning of the statute. Nor does it allege the necessary transition affecting the character of the guardian to discharge its trust duties. On the contrary, the whole tenor of the motion relates back to the time of appointment. The motion alleges facts which either had been or could have been advanced at the hearing on the petition for the appointment of a guardian. It seeks in effect to remove the guardian by indirection through a reversal or vacation of the order appointing such guardian and proposes to accomplish that result by a retrial of the issues previously determined by such order. On its face, therefore, it is fatally defective in failing to allege the cause for removal specified by the statute and does not entitle the movant to a hearing on its merits as a matter of law. That patent insufficiency rendered it incumbent upon the probate judge either on demurrer or on its own motion to deny the movant's motion

without a hearing on its merits, there being no alleged facts to be [107] judged as merits of removal. Consequently, his disposition of the motion was proper and does not constitute an "error as a matter of law" as propounded by the question under consideration. Such being the case, this court answers that question in the negative.

Next to be considered is the question of an abuse of discretion in denying a hearing on the merits of the motion as one to vacate the order appointing the guardian. Both parties concede that it is a matter within the sound judicial discretion of the probate judge to grant or deny such a hearing where, as here, that hearing would be nothing more than a rehearing of the issues previously determined by the order of appointment. Thus the propriety of denying the hearing or rehearing as an exercise of that discretion must be tested by the record. The denial thereof was made after the probate judge had been fully advised by the argument of the parties. It was made by the probate judge who had presided in the original guardianship proceedings and in the light of the motion's allegations, the character of which being more conclusory than factual. Upon that record, he deemed that no useful purpose would be served by a hearing on the motion's merits or by a rehearing of the previously determined issues. Nor is this court in a better position to say otherwise, or to declare as a matter of law that he abused his discretion in disposing of the motion as he did. It follows therefrom that there is no manifest abuse



of discretion appearing on the record to justify this court in disturbing the probate judge's exercise of discretion or to entitle the movant [103] to a hearing or rehearing as a matter of law. Consequently, the question of abuse to the same extent as that of error is answered in the negative. The seventh, eighth, ninth and tenth assignments of error, presenting those questions as a dual question, are therefore found to be without merit.

The second and final question of law remaining to be stated and considered is presented by the eleventh assignment of error. It is whether or not the probate judge in making certain observations upon the motives of the movant and the manner of presentation on the part of her attorney while that attorney was arguing the sufficiency of the motion, not only to allege the statutory cause for removal but to warrant a vacation of the order of appointment through a rehearing of previously determined issues, manifested such "bias and prejudice \* \* \* against appellant [movant]" that she was "denied a full and fair hearing and deprived of due process of law." This question is directed at the denial of that motion without a hearing on its merits, the full hearing and due process of law previously afforded in the original guardianship proceedings not being affected by that which may have transpired in subsequent proceedings. Nor does due process of law require a rehearing or more than one trial. (See *In re Acherly*, 19 Haw. 535.) The complete answer in the negative to the question, so directed, has already been effectively given



by this court in finding that the movant as a matter of law was not entitled to a hearing on the merits of her motion as to either the remedy of removal or that of vacation. Consequently, there is no need to decide as a matter of fact whether the probate judge's observations be warranted on the record, or so unwarranted [109] thereon that they manifested bias and prejudice against the movant and her attorney, the actual disposition of the motion itself having been properly made. Suffice it to say that the movant was not only allowed the fullest opportunity permissible in which to argue the sufficiency of her motion before the probate judge, but afforded thereby judicial process in the regular course of administration of justice which more than met the requirements of due process of law. The final question, therefore, is answered in the negative and the assignment presenting it found to be devoid of merit.

Orders affirmed.

/s/ LOUIS LE BARON,

/s/ EDWARD A. TOWSE,

/s/ GERALD R. CORBETT.

Harriet Bouslog (Bouslog & Symonds on the briefs) for appellant and plaintiff in error.

J. G. Anthony (Robertson, Castle & Anthony on the briefs) for appellees and defendants in error.

Certified true copy.

[Endorsed]: Filed Supreme Court T. H., February 5, 1951. [110]

In the Supreme Court of the Territory of Hawaii

Nos. 2761 and 2762

[Title of Cause.]

PETITION FOR REHEARING  
AND REARGUMENT

To the Honorable, the Supreme Court of the Territory of Hawaii, and the Justices Thereof:

Come now the appellants herein and respectfully petition for a rehearing and reargument of these causes on the following grounds:

I.

It is respectfully urged that the Court, in denying relief, did not give consideration to the facts alleged in the verified motion to vacate the appointment of the guardian, to hold further hearings or to remove the guardian. In the absence of a hearing on the merits, the facts alleged in the verified motion, and the offers of proof made on the return day of the motion, must, for the purposes of these cases, be taken as true. The return to the motion merely recites the proceedings theretofore had in the cause, and denies that the Hawaiian Trust Company has conflicting interests or is an unsuitable guardian.

The Court states that the underlying relief sought was to have previously determined issues reheard for the sole purpose [112] of discharging the guardian. This statement distorts the essential purpose of the motion, which was to permit the taking of

further and additional testimony and evidence necessary to a fair determination of the issues raised by the petition, and not before the court at the time the guardian was appointed.

No stronger case could be made, commanding relief from an unjust decision, than appears from the verified motion, the denial of which is covered by the appeal in No. 2761.

This verified motion, as appears from the face of the motion, proceeds on the ground that the original order was entered without the court being fully apprised of the facts, and upon certain fraudulent representations and concealments of material fact, as a result of which a full and fair hearing had not been had. The motion and offers of proof made on the return day of the motion show among other things:

1. That the alleged incompetent had been examined by a reputable alienist, who found her competent to select the person she desired to manage her affairs.

2. That the motives of the two petitioning sisters, who sought to have Hattie Kulamanu Ward declared incompetent, were suspect for reasons fully set forth in the verified motion.

3. That the Hawaiian Trust Company had conflicting interests which made it an unsuitable guardian.

4. That the alleged incompetent's property was and had been properly cared for by a person chosen by her, she having, according to proffered evidence,

competence to select the person she wished to assist her.

5. That the appointment of the Hawaiian Trust Company [113] as guardian would change the management of the family corporation, and that by so appointing the nominee of the two petitioning sisters, the Hawaiian Trust Company, the court was taking sides in a family dispute without any knowledge of the facts or merits of the respective sides in said dispute, and was not only depriving the alleged incompetent of the right to manage her property and estate or select whom she desired to manage it, but was also effectively robbing the two sisters who opposed the petition—because of the unique circumstances shown in the petition—of the right to manage their own property, or to have it managed by an impartial person or trust company not antagonistic to them and to their interests, and not committed to a course of action against their wishes.

On the basis of these showings alone, it would seem that the very minimum that equity and justice would require is that the court remain neutral in the family dispute and appoint a neutral or impartial person or agency and not one antagonistic to, or one committed to a course of action advisable to one side of the dispute, and to that end should have permitted the taking of further testimony to be fully advised as to the necessity for the appointment of a guardian, and as to the suitability of the guardian chosen, under the facts and circumstances.

Appellants in their briefs cited numerous author-



ities showing that the refusal of the judge below was error as a matter of law and an abuse of discretion.

Thus, in *Matter of Lamoree*, 32 Barb. 122, 124, cited with approval in *In re Rothman*, 188 N. E. 147, the New York Court of Appeals said:

Considering the close and intimate relations which the committee must maintain with the family and relatives of the lunatic, his power of control [114] —all but absolute—over his person and property, the remote possibility of his ever being in a condition to make any disposition of his estate which shall prevent its descent and transmission to the heirs at law and next of kin, a rule of practice or of positive legislation which would justify the appointment of a stranger to execute the trust of committee, without the assent and against the will of his family or other relatives, and without any sufficient or adequate cause, would be oppressive and intolerable.

and in *Re Colvin*, 3 Md. Ch. 206, the court held:

And accordingly, though it most frequently happens that the committee is appointed on the nomination of the person who sues out the commission of lunacy, a caveat may be entered against the person so nominated, and when this is done, the recommendations of the parties interested will be considered, and proof taken to aid the Court in making a selection. This is the established practice, and the propriety of it is apparent.

When, as it appears here, that the alleged incompetent has resided all her life with her sisters, Lucy and Kathleen, and that because of the joint property owned by them, and their ownership of stock in the family corporation, the affairs of all three were inextricably intertwined, it seems, in the words of the New York court, oppressive and intolerable to force a guardian unsatisfactory to these two on them, when because of the unique property situation they cannot do as they see fit with their own property without the consent of the guardian.

## II.

It is respectfully urged that the Court erred in reaching the conclusion that the Seventh Amendment does not guarantee to persons resident in the Territory of Hawaii the right to a jury trial on the issue of sanity and hence that Section 12509 of Revised Laws of Hawaii is valid and not in contravention of this Amendment. [115]

The Court, after noting that the United States Supreme Court has not specifically passed on this question, states that appellants have cited no clear authority of a lower court holding that a jury trial is a constitutional right in courts of the United States, including the District of Columbia and courts of the territories. On the contrary, it is respectfully shown that the federal cases which consider the problem all reach the conclusion that a jury trial of the issue of competency in such courts must be had before a person can be deprived of his liberty and property.

Thus, in *Hager v. Pacific Mutual Life Insurance Co.*, 43 F. Supp. 22, the court said:

I do not believe that under our Federal and State Constitutions a person can be declared incompetent and have his property taken out of his hand or be placed in confinement without the intervention of a jury and the verdict of a jury declaring him to be non sui juris. It seems to me that the statute is repugnant to our whole constitutional system.

The very fact that a person is insane or charged with being insane is equally as great if not even a greater reason to make the trial public and before a lawfully constituted jury than in the case of a person charged with crime. Nor should there be permitted a waiver of jury. Possibly without reason or capacity to properly select counsel or to defend himself a provision to permit a waiver of rights seems improper and on the same plane with the provision in Section 216aa-74 that he may demand a jury, which in my judgment is void.

In *In re Bryant*, 3 Mackay 489, 493-494 (Sup. Ct., D. C.) the court held that in the District of Columbia a jury trial was required before a person could be declared or held as a lunatic.

The court said:

This deprivation of the liberty of a citizen upon the ground of lunacy is a matter of very grave importance, because it may easily [116] happen that for fraudulent purposes, perhaps

with a view to deprive a person owning property of his control over it, a perfectly sane man might be sent to an asylum by his relations, upon a certificate of two physicians, and be illegally confined there for years.

We hold, therefore, first, that these sections of the Revised Statutes do not contemplate compulsory seclusion in this institution without due process of law. They only open its doors to those who have been properly found to be insane persons. If they meant anything else they would be unconstitutional.

And, secondly, we hold that the whole matter of the care of insane persons is regulated by the act of Maryland of 1785, which includes this proceeding of an inquiry by jury.

And in *Burke v. Wheaton*, Fed. Case No. 2165, 3 Cranch C. C. 341, the court held that the mode of ascertaining who are lunatics is by jury trial upon the issuance by the court of a writ de lunatico inquirendo.

The Court concedes that Section 12509 is in derogation of the common law, thus agreeing with petitioners that at common law the method of declaration of incompetency differed from our statute in that it could be had only after a jury determined the issue of competency.

The first ten amendments to the Constitution of the United States, known as the Bill of Rights, were proposed by the First Congress at the insistence and demand of the people that personal rights



and liberties established by common law at the time of the adoption of the Constitution could never be taken away or infringed upon by the federal government. Among these rights was the right to a jury trial in civil cases as it existed at common law. Even Congress cannot, by laws purporting to set up different legal remedies, deny persons the right to a jury trial as it existed at common law. *Raytheon Mfg. Co. v. Radio Corporation of America*, [117] 76 F. (2d) 943, affirmed 296 U. S. 459, 80 L. Ed. 327.

The Seventh Amendment did not enlarge or abridge the right of jury trial as it existed at the time of the adoption of the Constitution. It guaranteed its preservation as it existed at common law in proceedings of a legal as distinguished from an equitable character. *Fitzpatrick v. Sun Life Assurance Co. of Canada*, 1 F.R.D. 713.

While it is true that the appointment of a guardian is rested in the chancellor, the determination of the fact of competency was at common law established as the function of a jury, and only after determination of this issue by a jury could the chancellor appoint a committee.

See *Hamilton v. Traber*,

27 Atl. 229.

*Shumway v. Shumway*,

2 Vt. 339.

Thus, in *Matter of Perkins*, 173 N.Y.S. 520 at 523, the court held:

In insanity case, the alleged insane person is entitled to a trial of the question of fact, not

only by the statute, but as a constitutional right. Jurisdiction over lunacy cases was originally exercised by the Court of Chancery, and the custom prevailed on the part of the chancellor, before the Constitution was adopted, to require a trial by jury of the question of the insanity of a person, and therefore that was one of the cases where jury trials were preserved by the Constitution.

To determine what civil proceedings require determination of facts by the jury, the Supreme Court has said that we must look to the law as it existed at the time the Constitution and the amendments thereto were adopted.

There can be no question that only a jury could at common law find an individual insane, and that such a finding of insanity was a condition precedent to the appointment of the guardian of the person and property. See cases cited in appellants' [118] Opening and Reply Briefs and Supplemental Memorandum.

When either the state or the relatives of a supposed insane person attempt to deprive the supposed insane person of his liberty and the right to manage his property, there can be no doubt that the proceeding is an adversary proceeding, depriving such a person not only of the management of his property, but also the right to dispose of it as he sees fit by will. There is a value in controversy in such proceedings in the same manner as there is a value in controversy in will contest suits and

other proceedings tried by juries at common law.

See *Shumway v. Shumway*,

2 Vt. 339.

*State ex rel Finch v. Duncan*,

193 S. W. 950, 954.

The Court, in denying the right to a jury trial in the Territory pursuant to the Seventh Amendment, reaches a conclusion not supported by the common law that the verdict of a jury on the issue of sanity was advisory in nature. All the authorities show clearly that a judge at common law could not set aside the finding of a jury or ignore its decision, and hence reach a different conclusion. His power, as in all other law action, was merely to set aside the verdict and direct a new trial for errors in the record.

See cases cited in Opening and Reply Briefs and Supplemental Memorandum.

While it is true that the Supreme Court has not directly passed upon the question of the necessity of a jury trial to determine competency, the Supreme Court has exhaustively examined the nature of the rights guaranteed by the Seventh Amendment. [119]

In *Parsons v. Bedford*, 3 Peters 433, 446, 7 L. Ed. 732, Mr. Justice Story said:

The trial by jury is justly dear to the American people. It has always been an object of deep interest and solicitude, and every encroachment upon it has been watched with great jealousy. The right to such a trial is, it is believed, incorporated into and secured in every

State constitution in the Union; and it is found in the constitution of Louisiana. One of the strongest objections originally taken against the Constitution of the United States, was the want of an express provision securing the right of trial by jury in civil cases. As soon as the Constitution was adopted, this right was secured by the seventh amendment of the Constitution proposed by Congress; and which received an assent of the people so general as to establish its importance as a fundamental guarantee of the rights and liberties of the people. This amendment declares that "in suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved; and no fact once tried by a jury shall be otherwise reexaminable in any court of the United States, than according to the rules of the common law." At this time there were no States in the Union the basis of whose jurisprudence was not essentially that of the common law in its widest meaning; and probably no States were contemplated in which it would exist. The phrase "common law," found in this clause, is used in contradistinction to equity, and admiralty, and maritime jurisprudence. The Constitution had declared in the third article, "that the judicial power shall extend to all cases in law and equity arising under this Constitution, the laws of the United States, and treaties made or which shall be made under their authority,"



etc., and to all cases of admiralty and maritime jurisdiction. It is well known that in civil causes, in courts of equity and admiralty, juries do not intervene, and that courts of equity use the trial by jury only in extraordinary cases to inform the conscience of the court. When, therefore, we find that the amendment requires that the right of trial by jury shall be preserved in suits at common law, the natural conclusion is that this distinction was present to the minds of the framers of the amendment. By common law they meant what the Constitution denominated in the third article "law"; not merely suits, which the common law recognized among its old and settled proceedings, but suits in which legal rights were to be ascertained and determined, in contradistinction to those where equitable rights alone were recognized, and equitable remedies were administered; or where, as in the admiralty, a mixture of public law, and of maritime law and equity was often found in the same suit. Probably there [120] were few, if any, States in the Union, in which some new legal remedies differing from the old common law forms were not in use; but in which, however, the trial by jury intervened, and the general regulations in other respects were according to the course of the common law. Proceedings in cases of partition, and of foreign and domestic attachment, might be cited as examples variously adopted and modified. In a just sense, the amendment, then,

may well be construed to embrace all suits which are not equity and admiralty jurisdiction, whatever may be the peculiar form which they may assume to settle legal rights. And Congress seems to have acted with reference to this exposition in the Judiciary Act of 1789, ch. 20 (which was contemporaneous with the proposal of this amendment); for in the ninth section it is provided that "the trial of issues in fact in the district courts in all causes, except civil causes of admiralty and maritime jurisdiction, shall be by jury"; and in the twelfth section it is provided that "the trial of issues in fact in the circuit courts shall in all suits, except those of equity and of admiralty and maritime jurisdiction, be by jury"; and again, in the thirteenth section, it is provided that "the trial of issues of fact in the Supreme Court in all actions at law against citizens of the United States shall be by jury."

But the other clause of the amendment is still more important, and we read it as a substantial and independent clause. "No fact tried by jury shall be otherwise reexaminable in any court of the United States than according to the rules of the common law." This is a prohibition to the courts of the United States to reexamine any facts tried by a jury in any other manner. The only modes known to the common law to reexamine such facts are the granting of a new trial by the court where the issue was tried, or to which the record was

properly returnable; or the award of a venire facias de novo by an appellate court for some error of law which intervened in the proceedings.

The conclusion seems inescapable from this discussion that the right to trial by jury of the issue of sanity was preserved and guaranteed by the Seventh Amendment. The determination of the issue of sanity at the time of the adoption of the Seventh Amendment was not an equitable proceeding with an advisory jury, but was a proceeding governed by the common law [121] which required the verdict of a jury which was final and binding before the chancellor could appoint a committee. This has been the mode consistently followed in the courts of the District of Columbia.

It is respectfully submitted that Section 12509 deprives the alleged incompetent in this case of an absolute right to the verdict of a jury before she could be deprived of her property, and that the procedure set forth by 12509 denies due process of law and the right to a jury trial in violation of the federal Constitution.

### III.

It is respectfully urged that the Court erroneously failed to consider on the merits the questions presented under the writ of error by the first six assignments of error. In this respect, the Court's decision is inconsistent with the decision it reached in respect to the equitable nature of guardianship proceedings. The Court grounds its refusal to con-

sider these assignments of error on its assertion that the alleged errors were not called to the attention of the judge at the time and made the subject of objections and exceptions.

It has been settled law in the Territory of Hawaii that objections and exceptions are not necessary in proceedings of an equitable nature, and that errors apparent on the face of the record may be corrected by writ of error regardless of the taking of exceptions.

Thus, in *Cummings v. Iaukea*, 10 Haw. 1, the Court disposes of the contention that defects apparent on the record on the writ of error must be raised below by demurrer or exception. In that case, this Court said: [122]

But, even if no exception had in fact been taken to the overruling of the demurrer, or if the demurrer had not been interposed at all, a writ of error on the point of the alleged misjoinder could have been sued out within six months from the rendition of judgment if the judgment had not been satisfied.

The counsel for the plaintiff in error is under the impression that in order to avail himself of a writ of error he must have raised the point in the Court below and perfected his exceptions, if not sustained. This is not the law. "Any error appearing on the record, either of law or fact, or any cause which might be assigned as error at Common Law," may be corrected by writ of error. \* \* \*

It was competent for plaintiff in error to



have petitioned for his writ, within the statutory time, even though he had demurred, and even if he had not demurred and the record did not state that the demurrer had been argued and decided against him and that he had excepted to the ruling. \* \* \*

Moreover, as appears from the transcript of the proceedings, appellants' objections were through Mr. Cass made known to the judge during the course of the hearing.

The first six assignments of error raised serious questions as to the correctness of the decision below, here sought to be reversed.

These assignments are set forth on pages 32-33 of Appellants' Opening Brief, and the authorities which show error was committed by the court in his rulings on these matters are discussed on pages 35-52 of Appellants' Opening Brief and Appellants' Reply Brief, pages 7-12. These portions are hereby incorporated by reference in this petition, with the request that the Court consider them on the merits. [123]

#### IV.

It is respectfully urged that the Court erred in holding that there was not an abuse of discretion in the denial of the motion to vacate the appointment of the guardian or to remove the guardian. Appellants in their briefs cited cases involving closely analogous facts where courts have universally refused to uphold lower courts in appointing guardians, under facts similar to the facts and

circumstances here. It is inconceivable that a court should foreclose, without full knowledge of the facts and full and fair hearing, the right of the alleged incompetent Hattie Kulamanu Ward to manage her property or to select her own manager without the court hearing proffered testimony of a reputable alienist that she had the capacity to choose whom she desired to manage her property. It is equally inconceivable that a court should refuse to hear testimony concerning the related interests of the alleged incompetent with Lucy and Kathleen Ward before foreclosing their right to have a fair and impartial guardian appointed, one not antagonistic to their interests and committed to a course of action affecting their property as well as the alleged incompetent against their wishes. Not only does it appear that the control and management of the property and estate of Hattie Kulamanu Ward effectively gave to the trustee of her estate the power to change the control and management of the corporation, but it also appears that the appellants Lucy K. Ward and Kathleen Ward and the alleged incompetent Hattie Kulamanu Ward owned substantial properties jointly with rights of survivorship, namely, the premises known as the Old Plantation, comprising 23 acres of valuable land in the heart of [124] the City of Honolulu, including business property. Thus, by appointing a trustee unacceptable to these two persons, these sisters were deprived not only of their right to manage the family corporation, but also of their right to manage property belonging to them in which

the petitioning sisters had no interest whatsoever. Again it seems that the very least that could be expected of a court would be the appointment of an impartial person as guardian.

That the wishes of Lucy K. Ward and Kathleen Ward were made known to the judge during the original proceedings is clear from the transcript, when through their attorney, they asked the court, after his refusal to consider either of them as trustees, to appoint any other trust company than the one nominated by petitioners, and appointed by the court. No fairer attitude could have been manifested on their part, and under the facts and circumstances, it would seem that justice and equity would have required the court to follow this course, particularly in view of the joint holdings of the three sisters which made harmonious relations with the appointed guardian essential in order to preserve to Lucy K. Ward and Kathleen Ward, about whose competency there was no question, the right to manage their property as they saw fit.

## V.

It is respectfully urged that the Court reads into and construes Section 12529 in a manner inconsistent with the language of that section. While it is true that Section 12529 is prospective in operation, appellants, in so far as [125] their motion to remove the guardian is concerned, sought only prospective operation. In their motion appellants alleged the unsuitability of the trustee on the ground of conflicting interests, which conflicting in-



terests were spelled out in the petition. Section 12529, by its terms, does not limit the time at which removal may be sought. The allegations in the verified petition of conflicting interests clearly make out a case of unsuitability. It is one of the most basic principles of guardianship and trusts that no guardian be appointed whose interests may be conflicting. The inconsistency of the lower court in holding as a matter of law that Lucy K. Ward and Kathleen Ward, most of whose property was owned jointly with the alleged incompetent's, had conflicting interests, while the Hawaiian Trust Company, which engaged in the same kind of business in respect to the management of property as Victoria Ward, Limited, did not have such conflict of interests is apparent. It is respectfully urged that the allegations of conflicting interests of the guardian set forth in the verified motion meet the statutory requirements of 12529 and set forth facts showing the unsuitability of the guardian. Appellants therefore request that the court consider on their merits the assignments of error, 7-10, covering the unsuitability of the trustee, and in that connection to reconsider the authorities discussed on pages 52-63 of their opening brief and pages 12-14 of their closing brief incorporated herein by reference.

## VI.

It is respectfully urged that the court too narrowly construed the relief sought by the verified motion. The [126] verified motion clearly requests a reopening of the hearing for the purpose of tak-



ing additional testimony, so that the court could be fully advised of all the facts and circumstances, and could make a just decision in the light of facts and circumstances not brought to his attention or considered by him in the original determination of issues. While it is true that the issues of the petition remained the same, the verified motion sought to bring to the attention of the court new facts and circumstances. When it is considered that the motion was promptly filed after the original hearing, and that it sets forth essential and relevant facts necessary to a fair determination of the issues, it was an abuse of discretion not to permit further evidence to be adduced.

No harm could come to anyone, including the petitioning sisters and Hawaiian Trust Company, to have the determination made by the court after being fully apprised rather than at a time when the court was advised only as to the wishes of the two petitioning sisters, and was not fully advised of the interwoven property interests of the alleged incompetent and Lucy K. Ward and Kathleen Ward. When the serious nature of incompetency proceedings is considered, it seems that a court should do everything in its power to see that it is fully advised of all the facts and circumstances before making a decision. It is universally held that statutes providing for the appointment of guardians shall be administered with utmost caution. See *Danner v. Bever*, 42 A (2d) 747 (Pa., 1945).

## VII.

It is respectfully urged that the court did not give due consideration to the assignment of error charging a denial [127] of due process of law from the evident bias and prejudice of the lower judge against Lucy K. Ward, as indicated by his intemperate and injudicious remarks as to her character and motives, where the record indicated no factual basis for the charges made. It would seem to be the duty of this court to discourage the vituperative abuse of petitioners to the court and to firmly discourage irascibility and intemperance of judicial behavior, particularly where, as here, the bias and prejudice indicated is so strong as to make apparent from a casual observation of the transcript that the judge, from some source outside the record, was so prejudiced against Lucy K. Ward as to be unable to accord her an impartial hearing. While a motion for rehearing is discretionary with the trial judge, every litigant is entitled to an impartial tribunal, and where by his conduct a judge shows inability to accord a fair and impartial hearing, there is a denial of due process of law.

Wherefore, appellants pray that a rehearing and reargument be had, and this Court reconsider its decision in view of the law and the facts set forth in the petition.

Dated at Honolulu, T.H., this 3rd day of April, 1951.

Respectfully submitted,

BOUSLOG & SYMONDS,

By HARRIET BOUSLOG,  
Attorneys for Appellants.

Certificate of Counsel

I hereby certify that the foregoing petition for rehearing is presented in good faith.

/s/ HARRIET BOUSLOG.

Certified true copy.

[Endorsed]: Filed Supreme Court, T.H., April 3, 1951. [128]

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In the Supreme Court of the Territory of Hawaii

In the Matter of:

THE GUARDIANSHIP OF HATTIE KULAMANU WARD,

An Incompetent.

Nos. 2761 and 2762

[Title of Cause.]

DECISION ON PETITION FOR REHEARING

Filed April 3, 1951.

Decided April 18, 1951.

Le Baron and Towse, JJ., and Circuit Judge Corbett in Place of Kemp, C. J., Retired.

Per Curiam. This is a petition for rehearing of the cause determined by this court's opinion as recorded at page 39, ante. It rests upon seven grounds constituting in effect a reargument of the previously determined cause. As such, they are argumentative in character and repetitive of matters heretofore fully briefed and argued by counsel at the hearing on appeal and thereafter fully considered by this court. No useful purpose, therefore, would be served by setting forth such grounds. Suffice it to say that this court on review of its opinion with respect to the petition's grounds and reargument finds nothing therein to warrant a rehearing of the cause. [129]

Petition for rehearing denied without further argument.

Harriet Bouslog for the petition.

By the Court:

/s/ GUS K. SPROAT,  
Clerk.

Approved:

/s/ LOUIS LE BARON,  
Associate Justice.

/s/ EDWARD A. TOWSE,  
Associate Justice.

/s/ GERALD R. CORBETT,  
Circuit Judge in Place of  
Chief Justice, Retired.

Certified true copy.

[Endorsed]: Filed Supreme Court, T.H., April  
18, 1951. [130]



In the Supreme Court of the Territory of Hawaii

No. 2761

Appeal from the Circuit Court, First Judicial Circuit, the Honorable Albert M. Crisy, at Chambers in Probate Proceedings. Probate No. 15530.

In the Matter of:

THE GUARDIANSHIP OF HATTIE KULAMANU, WARD,

An Incompetent.

### DECREE ON APPEAL

Pursuant to the opinion of the Court filed February 5, 1951, the orders appealed from are affirmed.

Dated: Honolulu, Hawaii, May 5, 1951.

By the Court:

[Seal]     /s/ LEOTI V. KRONE,  
Clerk.

Approved:

/s/ EDWARD A. TOWSE,  
Justice.

Certified true copy.

[Endorsed]: Filed Supreme Court, T.H., May 5, 1951. [132]

In the Supreme Court of the Territory of Hawaii  
No. 2762

Error to the Circuit Court, First Judicial Circuit,  
the Honorable Albert M. Cristy, at Chambers  
in Probate Proceedings. Probate No. 15530.

In the Matter of:

THE GUARDIANSHIP OF HATTIE KULA-  
MANU WARD,

An Incompetent.

JUDGMENT ON WRIT OF ERROR

Pursuant to the opinion of the Court rendered  
February 5, 1951, the orders appealed are affirmed.

Dated: Honolulu, Hawaii, May 5, 1951.

By the Court:

[Seal]     /s/ LEOTI V. KRONE,  
Clerk.

Approved:

/s/ EDWARD A. TOWSE,  
Justice.

Certified true copy.

[Endorsed]: Filed Supreme Court, T.H., May 5,  
1951. [134]

In the Circuit Court of the First Judicial Circuit  
Territory of Hawaii

No. P-15530

In the Matter of:

THE GUARDIANSHIP OF HATTIE KULA-  
MANU WARD,

An Incompetent.

TRANSCRIPT OF PROCEEDINGS

Transcript of proceedings in the above-entitled  
cause before the Honorable Willson C. Moore, Cir-  
cuit Judge.

December 14, 1948

Appearances:

J. GARNER ANTHONY, ESQ.,

Appearing on Behalf of the Petitioner.

GILBERT E. COX, ESQ.,

CARLSMITH & CARLSMITH,

Appearing on Behalf of Lucy Ward. [135]

Mr. Anthony: I appear for the petitioners in  
this case, petitioning for the appointment of a  
guardian.

Mr. Cox: In this matter, may the name of  
Carlsmith & Carlsmith, representing Lucy K. Ward,  
appear in the record?

The Court: The appearance may be shown.

Mr. Cox: Gilbert E. Cox, associate, appearing at  
this time for the firm.

Mr. Anthony: Ready to proceed, your Honor. I don't know that there can be an appearance of a person other than the incompetent. That is a little anomalous.

The Court: What about this incompetent? Has there been a guardian ad litem appointed?

Mr. Cox: No, your Honor.

The Court: Where is this woman?

Mr. Anthony: At the Old Plantation, a few hundred yards from the courthouse here.

The Court: That is a long hundred yards.

Mr. Anthony: I say a few hundred yards.

The Court: It seems to me—here is a property valued in excess of \$500,000. That is a lot of money.

Mr. Anthony: That's correct. That's why we think a guardian should be appointed. The evidence will show that she is incompetent to handle her business affairs.

The Court: I think it would appear to the court, in a situation like that, where there is that amount of money involved that the court should, out of the abundance of caution, or out of some caution, at least, have a guardian ad litem appointed to represent the person who is alleged to be [137] incompetent.

Mr. Cox: Of course, that is entirely agreeable. I don't think that is a requirement of the statute. There is no jurisdictional requirement.

Mr. Anthony: No, but Mr. Cox represents the **sister; not the incompetent.**

Mr. Cox: Not the incompetent, but one who has entered in the petition.



The Court: Of the Ward family in the courts, of my own knowledge of the situation, there has been considerable litigation in which they are involved. I think in order to protect—you might say—the court in this situation, that the court believes before any proceeding of this kind has gone to a hearing, that there should be a guardian ad litem, especially when there is that much involved, to represent the interest of the one who is alleged to be incompetent.

Mr. Anthony: May I ask counsel, you are appearing in this case, you are resisting the petition, Mr. Cox?

Mr. Cox: For the record, your Honor, we were retained in this matter about twenty-four hours ago by Miss Lucy K. Ward, who, I still contend, has an interest in this petition. Having been named as attorney in fact we are asking a continuation of the matter for the simple reason that we have not been able to discuss the matter with Lucy K. Ward or any others who might be of interest in the matter.

The Court: Lani W. Booth and Mellie E. Hus-tace are sisters?

Mr. Anthony: That's correct.

Mr. Cox: I believe there is another one. [138]

Mr. Anthony: There are five sisters altogether.

The Court: We have got four in the picture now.

Mr. Anthony: Two petitioners and the alleged incompetent.

The Court: Well, I don't know. Of course, I don't know the position of Miss Lucy K. Ward

in this, but I do believe, and I think it would be a very proper step in a situation of this kind where there are members—two sisters on one side and a petitioner on the other side, making an appearance, that we should have a guardian ad litem appointed to represent the interest of this person who is alleged to be incompetent.

Mr. Anthony: May I just revert to the statute a minute, your Honor, to see what we should do under those circumstances?

The Court: I know that there have been a number of matters of this kind in which a guardian ad litem has been appointed. There is an allegation in this petition here that the business of this alleged incompetent has been handled by Lucy K. Ward, who comes into the picture here through her attorney. Of course, if she holds a power of attorney from this woman, she might well be interested.

Mr. Anthony: The only record for the appointment of a guardian ad litem is contained in Sections 12507 and 12509, of the Revised Laws. 12507 has to do with the appointment of a guardian ad litem for a minor. 12509, which relates to the guardianship of incompetents, provides:

“When the relations or friends of any insane person shall apply to any of the judges hereinbefore mentioned to have a guardian appointed for such person, the judge shall cause notice [139] to be given to the supposed insane person of the time and place appointed for hearing the case, not less than fourteen days before the time so appointed. The judge shall

also cause notice to be given to the husband, wife, parent, or any child or children of the supposed insane person, if any there be residing within the jurisdiction of the court.”

There is no such person to answer that description.

“In case it shall appear by return of the summons or by affidavit to the satisfaction of the judge that no such person can be found——”

Namely, husband, wife, child, etc., just recited.

“——the judge may appoint a guardian ad litem to protect the interest of the supposed insane person and cause such notice to be given to such guardian ad litem.”

So your Honor has full power to do what your Honor suggests. Then it goes on to say:

“If after a full hearing it shall appear to the judge that the person in question is insane, the judge shall appoint a guardian of his person or estate or both with the powers and duties hereinafter specified, and, in the case of the appointment of a guardian ad litem, provide for the compensation and reasonable and necessary expenses of such guardian ad litem.”

The Court: I feel that a guardian should be in a case that involves as much property as this, and in view of what the court can foresee from two parties coming in here, that it is liable to end up in quite a contest. I think that it would be very

proper, and the court feels that a guardian ad litem should be appointed. [140]

Mr. Anthony: Very well——

The Court: And in this particular regard, the court feels that the guardian ad litem should be an attorney that may act as such guardian in any way necessary to protect the interest of this alleged incompetent.

Mr. Anthony: Very well, then. Would your Honor make an appointment?

The Court: I can't make it right off-hand. I have been running through my mind the available people while I have been talking. There are several attorneys——

Mr. Anthony: I can present an order for your Honor's signature?

The Court: Yes.

Mr. Anthony: Leaving the name blank.

The Court: You can present the order and leave a blank to fill in. When you present your order—I think in the next twenty-four hours—the court can select one.

Mr. Anthony: I would like to have the court fix the time of the hearing on this. There are very substantial properties involved here. There should be a prompt determination.

Mr. Cox: I should like to point out, in view of the remarks that you have made upon the amount of property involved, and as Mr. Anthony has just also mentioned, the words of the statute with regard to a full hearing, that should be given full consideration in this matter. There is one other situa-



tion involved. Katherine Ward, who is not represented by counsel, although I know that she wished——

The Court: I might say on the point of the [141] guardian ad litem, I imagine the guardian ad litem would want some time at least to make a cursory investigation as to what the situation was.

Mr. Anthony: Of course, he would have to.

The Court: You could not very well appoint one and say that you want to hear it this week.

Mr. Anthony: Well, I didn't expect that. But I would like to get it heard fairly soon, though.

The Court: I would suggest that we might hear it—we might continue the hearing of this case, subject to being continued if the guardian ad litem appointed, or any other party would make a justifiable representation that he needed more time. You might make a setting some time between Christmas and New Years, during that week. There is approximately half of this week gone. We all know that during next week that lawyers and various other people with the Christmas spirit don't feel too inclined to get tangled up in legal matters.

Mr. Anthony: I think that is a good suggestion.

Mr. Cox: It might be possible to put that in the first week of January, in view of the holiday season, in view of the large number of interested parties in this matter.

Mr. Anthony: We don't even know whether there is going to be anybody in this case, other than the guardian ad litem at this point.

The Court: Let's see, today is the 14th. A continuance to the 28th. That would be two weeks.

Mr. Anthony: That's agreeable, your Honor.

The Court: That is what it would amount to. You [142] say that you just got in touch with your client?

Mr. Cox: Yes.

The Court: Are you going back to Hilo today or tomorrow?

Mr. Cox: No. I am not going to be in the city here most of the week. I will go back to Hilo tomorrow.

The Court: I would suggest when Mr. Anthony prepares his order for the appointment of the guardian ad litem, that you make an extra copy of that, so that Mr. Cox may have that and he will know who the guardian ad litem is. Then it might be necessary, or you might find it a good thing, after conversing with your clients—some of these cases are disposed of in more or less an amicable manner, all parties concerned get together or try to get together and find out what is to be done.

Mr. Anthony: I was going to make the suggestion, if after investigation by Mr. Cox—he should not be pressed to state his position until he has made an investigation—he and the guardian ad litem, if they can conclude that they can agree that the prayer of the petition should be granted, we could have this matter disposed of even prior to the 28th.

The Court: Of course, if there is no contest, it means a matter of ten or fifteen minutes, where, if

it is a contest, it may be a matter of ten days or two weeks. It will stand continued at this time until the same hour on December 28th. The case will go ahead and proceed at that time unless there is good cause shown here that it should not then proceed.

Mr. Cox: Thank you very much. When may we expect the appointment? [143]

The Court: Whoever is guardian ad litem will be appointed by noon tomorrow, not later than noon. I keep a list in here of all the attorneys. I would like to go through that list. Some have gone through my mind as being quite appropriate. But I may go through the list and find somebody that is more appropriate.

Mr. Anthony: Your Honor, just to make——

The Court: I might say this: Is there any particular attorney or attorneys that anybody has any violent objection to?

Mr. Anthony: I think we would be satisfied with anybody selected by this court.

Mr. Cox: I think that is correct.

Mr. Anthony: Your Honor, may I make one suggestion, knowing a little bit about this family, that Mr. Cox should advise his client that the ward or the alleged incompetent will be visited by the guardian ad litem.

The Court: Certainly.

Mr. Anthony: Just so that we have no difficulty.

Mr. Cox: I understand.

The Court: Of course, you must advise your client that the guardian ad litem will have to be

permitted to see the alleged incompetent, because he is——

Mr. Cox: I understand that, your Honor. I will do that.

The Court: I don't know, Mr. Anthony, on this competency. Have any doctors been taken into consultation on this point? [144]

Mr. Anthony: It is not a question of medical testimony, your Honor.

The Court: I thought if there had been, it might be well that the doctor or such person be directed to give a full report to the guardian ad litem. That is the only thing I was thinking of.

Mr. Anthony: We have no such report, your Honor. May I have that hour again?

The Court: At 1:30 on December 28th. If there is a contest, gentlemen, just keep in mind that we could have the pro forma matters, and the contest hearing at the end of the calendar.

Mr. Anthony: Thank you very much.

Mr. Cox: Thank you.

(At this time the court continued the matter until December 28, 1948, at 1:30 o'clock [145] p.m.)

First Circuit Court,  
Territory of Hawaii—ss.

I, Sidney H. Minns, shorthand reporter for the Territory of Hawaii, do hereby certify that I reported in shorthand the proceedings had in the matter of the guardianship of Hattie K. Ward, an



incompetent person, before the Honorable Willson C. Moore, Circuit Judge, on December 14, 1948, that I transcribed the same, and that the transcript hereto annexed is a true and correct transcript of my shorthand notes so taken.

/s/ SIDNEY H. MINNS.

Honolulu, T.H., February 25, 1949. [146]

December 28, 1948

E. F. COLLINS, ESQ.,

Of Messrs. Smith, Wild, Beebe & Cades,  
present.

The Court: This is a petition for the guardian of the estate of Hattie Kulamanu Ward.

Mr. Collins: I spoke to Mr. Anthony about this matter, and as I recall I spoke to the Court. We are having an examination made of the ward.

The Court: Yes, you are the one who was appointed guardian ad litem in this case.

Mr. Collins: Yes.

The Court: And you say that the examination has not been completed?

Mr. Collins: The examination has not been completed, and the doctors advise us that it will take approximately three weeks to complete the examination. I spoke to Mr. Anthony and also to the attorney for the appointee with the power of appointment, and both attorneys have agreed that

this [147] matter should go over for three weeks, or be taken off the calendar.

The Court: This is December the 28th?

Mr. Collins: Yes, sir.

The Court: All right, I will continue this for a period of three weeks, which will be January the 20th, 1949, and that will come before Judge Cristy.

(Adjourned.)

I Hereby Certify the above and foregoing, 2 pages of transcript, to be a full, true and correct transcript of my shorthand notes taken on December 28th, 1948, at the place as herein set forth.

/s/ R. N. LINN,  
Official Reporter.

Honolulu, T.H., April 22, 1949. [148]

January 13, 1949

Before the Honorable Albert M. Cristy, Second  
Judge, Honolulu, T.H.

Appearances:

J. GARNER ANTHONY, ESQ.,  
Of Robertson, Castle & Anthony,  
Representing Petitioners.

PHIL CASS, ESQ.,  
Representing Miss Kathleen Ward.

WENDELL CARLSMITH, ESQ.,

Of Carlsmith and Carlsmith, Hilo, Hawaii,

Representing Miss Lucy Ward.

J. EDWARD COLLINS, ESQ.,

Of Smith, Wild, Beebe and Cades,

Guardian Ad Litem. [149]

Upon the Clerk calling the case, the following proceedings were had:

Mr. Anthony: I might make a brief statement.

Mr. Cass: May I enter my appearance for Miss Kathleen Ward?

Mr. Carlsmith: May I enter the name of Carlsmith and Carlsmith for Miss Lucy Ward?

The Court: And Mr. Collins as guardian ad litem.

Mr. Collins: That's right, your Honor.

Mr. Anthony: If the Court please, this petition was filed on November 23rd. It was duly served on the alleged incompetent as appears by the order and the return on file, and upon the return day before Judge Moore, I believe Mr. Carlsmith or a representative from his office entered their appearance, and Judge Moore at that time stated that he thought in the interest of all concerned he should appoint a guardian ad litem.

The Court: I have read the minutes.

Mr. Anthony: I didn't know your Honor had. In any event, we forwarded a copy of the petition and order to Mr. Collins, the guardian ad litem,

who appeared in the case and undertook to make an investigation on behalf of the alleged incompetent. We are ready to proceed with our proof, and I think the guardian ad litem will have a report to submit to the Court. Shall I proceed with the evidence?

The Court: Proceed.

Mr. Anthony: Mrs. Booth, please take the witness stand. [150]

MRS. LANI BOOTH

called as a witness, being first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Anthony:

Q. Your name, please?

A. Lani Booth, or should I give the whole name?

Q. That is good enough. Mrs. Booth, you were born in the Territory, were you?

A. Yes, I was.

Q. And you have sisters who are living here in Honolulu, have you?      A. Four sisters.

Q. Who are they?

A. Mrs. Mellie Hustace, Miss Kulamanu Ward, Lucy Ward and Kathleen Ward.

Q. Approximately how old is Kulamanu Ward?

A. About 70. She will be 70 this year.

Q. Incidentally, which one is the oldest?

A. Mrs. Hustace. She will be 82 this year.

Q. Your sister Hattie Kulamanu Ward, just briefly tell the Court how well you know her.



(Testimony of Mrs. Lani Booth.)

A. I practically spent my life with her, and I think I know her likes and dislikes even better than she does.

Q. Mrs. Booth, you are petitioner in this case requesting the appointment of a guardian of the property of Hattie Kulamanu Ward, are you not?

A. Yes, I am.

Q. Upon the ground that she does not have sufficient [151] mental capacity to take care of her property and affairs?

A. Yes, absolutely.

Q. Will you please state to the Court upon what you base that allegation of her mental and physical incapacity?

A. She has grown very forgetful with her years, and when she has been told to do anything, unless you are right there with her, she immediately forgets. She can't keep it in her mind more than five or ten minutes at a time.

Q. How long has that situation continued, Mrs. Booth?

A. It started before my mother's death in 1935.

Q. 1935? A. 1935.

Q. Do you know whether or not she has the ability and capacity to conduct any business affairs?

A. No, absolutely not; she couldn't do it.

Q. She couldn't do it? A. No.

Q. Does she know how to look after the assets of her estate? A. No, she has never done that.

Q. When you say she is forgetful, will you give

(Testimony of Mrs. Lani Booth.)

the Court some brief examples of her lapses of memory?

A. When she has answered the telephone she seems to know who she is talking to at the time, but immediately upon leaving the telephone, from here to the chair, she has forgotten the party entirely.

Q. Have you asked her whom she is talking to?

A. I have asked her whom she is talking to and she doesn't remember.

Q. What occurs when she goes out, first when she is getting [152] dressed. Will you give some examples to the Court about that situation, when she gets dressed? Do you ever go out with her?

A. I used to, but now now.

Q. Not lately?           A. Not lately.

Q. Does she know where she is going?

A. She will always ask where she is going, and unless we are with her right while she is dressing, she will ask all the time she is dressing, which usually takes quite a little while, where we are going and why we have to go; but she has forgotten all the answers we have given her previously.

Q. Does she read the newspapers?

A. She reads the newspapers, and it is usually one article from first to last. She forgets everything else. She even forgets she has read that article.

Q. Does she read it out loud at times?

A. Yes, if there are people around to listen to her, and when you tell her she has already read that, she doesn't remember it.

(Testimony of Mrs. Lani Booth.)

Q. She is the owner of substantial property within the jurisdiction of this Court, is she not?

A. Yes.

Q. Stocks and bonds and certain real estate?

A. Yes.

Q. And that requires somebody that has legal capacity to manage?

A. I should think so, yes. I have had to have it done for myself and I don't own nearly half [153] that.

Q. I see. You are satisfied that your sister, Kulamanu, is not competent to manage her property affairs? A. Definitely not competent.

Q. Do you know whether or not her business is conducted by an attorney-in-fact?

A. Yes, it is conducted by sister Lucy.

Q. And you have asked that the Hawaiian Trust Company be appointed guardian in the event the Court finds incompetency to exist? A. Yes.

Q. Where is Miss Kulamanu Ward living at the present time? A. At the old home.

Q. Right here in Honolulu?

A. Old Plantation.

Q. You live right next door, do you?

A. Right on part of the property, in my own home.

Q. Who lives with Kulamanu?

A. Lucy and Kathleen.

Q. They are both sisters? A. Sisters.

Mr. Anthony: No further questions.

Mr. Collins: I have no questions, your Honor.

(Testimony of Mrs. Lani Booth.)

The Court: Any other attorneys desire to ask any?

Cross-Examination

By Mr. Cass:

Q. Mrs. Booth, is Mrs. Hustace competent to handle her affairs?

A. Right now, on account of her blindness, she isn't able to do that. [154]

Q. You and Mrs. Hustace, Kulamanu, Miss Kathleen Ward and Miss Lucy Ward are the directors of the Victoria Ward, Ltd., are you not?

A. That is rather difficult to answer right now, Mr. Cass. I was a director, but since Mr. Hapai and Lucy have taken over, they have not notified us of any directors' meetings, but have held meetings.

Q. How long since you attended a directors' meeting of the corporation?

A. Since March of this year.

Q. March of last year? A. Yes, last year.

Q. 1948? A. Yes.

Q. And how long since Mrs. Hustace has attended?

A. She was there at the same meeting.

Q. At the same time? A. Yes.

Q. You say that you don't handle your own property. Who handles it for you?

A. I don't handle it?

Q. I understood you to say,—

A. I do handle my own property, but I have to seek legal advice at times. I do handle my own affairs.



(Testimony of Mrs. Lani Booth.)

Q. You do handle your own affairs?

A. Yes.

Q. Does the Hawaiian Trust have any interest in the property that you handle?

A. No, none whatsoever. [155]

Q. Does the Hawaiian Trust have any interest in the property of Mrs. Hustace?

A. Not that I know of.

Q. Do you ask advice from the Hawaiian Trust Company concerning your affairs?

A. Not so far.

Q. Not so much? A. Not so far.

Q. Not so far. Now, Miss Kulamanu, you say, never has handled her own affairs?

A. Not to my knowledge, she has never handled any business affairs.

Q. And that goes back to when she was a girl?

A. Well, she didn't really have anything of her own at that time, in girlhood.

Q. When did she first have property that required management?

A. After the death of my two aunts.

Q. How long ago was that?

A. I am not sure of the death of Mrs. Allen or Mrs. Foster, but it was quite awhile before my mother died.

Q. Your mother died in 1935? A. 1935.

Q. Who handled her affairs from the time she began to have property to manage?

A. I think at the start it was Mr. Ernest Wodehouse, and then Lucy came later.

(Testimony of Mrs. Lani Booth.)

Q. And was it done under power of attorney or how? A. No. [156]

Q. Did she set up a trust, or did she give these powers of attorney?

A. Lucy had the power of attorney.

Q. And Miss Lucy has that power of attorney now? A. So far as I know.

Q. Now, in your petition you said that there is a conflict of interest between Miss Lucy and the interest of Miss Kulamanu. What is that conflict?

A. Right now it would be the the ranch on Molokai.

Q. What is the conflict? What is the difficulty between the two?

A. I understood from Lucy that she had invested some of my sister Kulamanu's money in the ranch. It wasn't a paying ranch at the time. It wouldn't be right. I wouldn't think so, anyway.

Q. In other words, Miss Lucy, you say, has invested Miss Kulamanu's money in a non-paying ranch? A. Yes.

Q. Did Miss Lucy invest her own money in that?

A. Yes.

Q. As much as Kulamanu's?

A. That I couldn't say. I wouldn't know.

Q. You doubt the wisdom of that purchase?

A. I do.

Q. Is that the cause of this particular action?

A. No, not exactly.

Q. Why do you think that a change in the situation of having Miss Kulamanu's attorney-in-fact

(Testimony of Mrs. Lani Booth.)

handle her affairs in favor of a guardian appointed by the Court would be of benefit to her? [157]

Mr. Anthony: I object to the question. Either the alleged incompetent has the capacity or doesn't have the capacity. I don't think the question of whether or not it is wise to have the incompetent handling her own affairs through an attorney-in-fact is a proper question.

Mr. Cass: If the Court please, this is one of the petitioners. I seek to draw from her the reasons for her petition, if she has any other than the direct welfare of her sister.

The Court: The question of the wisdom or non-wisdom of the choice of manager is not a question which this Court passes upon. It is a question of whether or not the Court's jurisdiction has been established by showing incompetency to handle one's own affairs.

Mr. Cass: I seek to draw from this witness the motive back of her petition, if she has a motive other than the welfare of her sister. I think that it is material to this issue that the petitioning party should be under examination to determine whether or not there are any motives other than those that appear on the face of the petition, and that is why I asked her what is her objection to the manner in which Miss Lucy handled her affairs.

The Court: The Court would have to sustain the objection that the motive of the petitioner is not a thing that would disturb the Court or encourage the Court. It is a question of whether or not there is a

(Testimony of Mrs. Lani Booth.)

prima facie proof and ultimately a sufficient proof to indicate the state of incompetency, Mr. Cass.

Mr. Cass: That is true, but she is also a witness as to the competency of her sister, and the motives of the [158] witness in testifying are always material.

The Court: The objection is sustained on the form of the question, as to the particular question you just put. If you want to find out whether this witness is exceeding or exaggerating the truth over the competency, you are at liberty to go into that phase of it, of course.

Q. (By Mr. Cass): Mrs. Booth, when did you first notice that your sister, Kulamanu, was not competent?

A. To handle her affairs or was being forgetful?

Q. Yes.

A. It was during Mother's illness.

Q. That was in 1935 or before that?

A. Before then.

Q. And since that time you don't believe she has been competent to handle her affairs?

A. Definitely not.

Q. Did you ever protest the selection of Miss Kulamanu as a director of your corporation?

A. Yes, I said that she was not capable of understanding some of the things that we had to pass upon, but I was overruled.

Q. What was the nature of some of the things that you referred to?

A. In decisions of the business.



(Testimony of Mrs. Lani Booth.)

Q. That is within the last year or so?

A. And before that, there were other decisions that came up. I can't mention what they were, but Kulamanu couldn't remember long enough. We had to keep prompting her and telling her what it was all about.

Q. When she understood what it was all about, did she [159] decide rationally what was to be done?

A. She would decide what the rest of us would decide upon.

Q. So that from sometime prior to 1935 up to a year or so ago you accepted her as an officer of your corporation and allowed her to vote on the affairs of the corporation?

A. It was Mother's wish, and we all held her there.

Q. The affairs of this corporation, are they very extensive?

A. They are getting almost out of bounds. Yes, they are extensive.

Q. And you believe she is incompetent because she is unable to understand some of the affairs of this corporation?

A. Yes, she is.

Q. How is she on ordinary affairs of knowing what to do with her own affairs?

A. Personal?

Q. Yes. She always has trusted Lucy to do those for her, is that it?

A. In just what way?

Q. Property affairs, her own personal property affairs.

(Testimony of Mrs. Lani Booth.)

A. No, that has always been taken care of by Lucy.

Q. Has Miss Kulamanu got sufficient intelligence to know what Miss Lucy is doing for her?

A. She seemed to have confidence in her and let her go ahead and do what she wanted. In fact, there were times when Lucy didn't even consult her. Things came up hurriedly and she would have to decide quickly.

Q. When Miss Kulamanu first executed her power of attorney to Miss Lucy, did you object?

A. I don't remember when that was done. In fact, I don't think I was here, nor was I told of it until quite awhile later. [160]

Q. Was her condition any different then than it is now?

A. I don't even know when it was done, Mr. Cass.

Q. Well, you said that you noticed her condition began to change during your mother's illness.

A. Yes.

Q. Has there been any decided change since 1935 in Miss Kulamanu's state other than her advanced age?

A. Well, she has become more forgetful.

Q. Isn't it true that Miss Kulamanu is just a nice old lady of approximately 80 years old, maybe a year or so less, with about the same aging qualities of other people of that age?

A. Possibly, but she is not like the way mother used to be.

(Testimony of Mrs. Lani Booth.)

Q. Your mother was an unusual woman.

A. She was an exceptional woman.

Q. By ordinary women of about 80, how would you judge Miss Kulamanu? She is about the same as the rest of the 80-year-old women who have never had business experience themselves, is she not?

A. I wouldn't know how to answer that, because I haven't come in contact with others of that age.

Q. Well, you know Mrs. Hustace.

A. There is no comparison between the two. Mrs. Hustace knows what she is doing, and Miss Kulamanu does not.

Mr. Cass: That's all.

Mr. Anthony: No further questions.

(The witness was excused.)

Mr. Anthony: Your Honor, I think that it might be advisable, at this time, if we would have the report of the [161] guardian ad litem. I have other witnesses in the courtroom. I understand Mr. Carlsmith's position is not to resist the petition. I don't know whether Mr. Cass's position is the same.

The Court: The Court might have a report from the guardian ad litem what, if anything, has been done in the investigation.

Mr. Collins: If your Honor please, as the guardian ad litem in this matter, after conferring with the alleged incompetent and conferring with the physician of the alleged incompetent, it was deemed advisable to have a complete and thorough psy-

chiatric examination made. Now, with this in mind, Dr. Kepner, who is a well-qualified psychiatrist and alienist, with his staff made a thorough investigation over a period of two weeks, as a result of which he has submitted a report to me, which I would like to submit to your Honor, on her mental condition. I offer this in evidence.

The Court: Let the record show that the report has been submitted to the Court. Give me a minute or two to look it over. I would like to ask other counsel if there is any point in putting the doctor on to substantiate the report, or whether this is acceptable to you with the idea that if the doctor appeared and were examined at length, his report would be as indicated here. As I understand it you gentlemen have had opportunity and access to this report?

Mr. Carlsmith: Yes, your Honor.

Mr. Anthony: Yes, your Honor.

Mr. Cass: I believe if he were to appear here and examined, he would testify in accordance with the report [162] submitted. I see no point in having him here.

The Court: All that seems necessary of this report to make a part of this record is that "In summary, it is my opinion that this patient is suffering from organic mental deterioration—on a senile and arteriosclerotic basis—to a very marked degree, with defects in orientation, memory, and judgment which would render her incompetent and unable to properly manage business affairs." The



original report is returned to the custody of the guardian ad litem.

Mr. Anthony: If your Honor please, in the absence of any statement from other counsel as to their position, does the Court desire me to proceed with further proof of like witnesses?

The Court: The Court up to date feels there is sufficient prima facie showing, unless counsel desires a more complete showing.

Mr. Carlsmith: We do not.

Mr. Cass: We do not as to the mental state.

The Court: The Court, therefore, on the presentment as presented, indicates that there is sufficient prima facie proof to show a mental incompetency to handle business affairs.

### EDWARD HUSTACE

called as a witness, being first duly sworn, was examined and testified as follows:

#### Direct Examination

By Mr. Anthony:

Q. Your name, please?

A. Edward Hustace.

Q. Do you know Hattie Kulamanu Ward? [163]

A. I do.

Q. Do you know whether or not she has any property within the jurisdiction of this Court?

A. She does.

Q. Can you briefly state what that consists of?

A. She has considerable stocks and bonds, I would say in the neighborhood of \$300,000, and in

(Testimony of Edward Hustace.)

excess, probably. She has a half interest in the large Puuohoku Ranch on Molokai, which is probably valued at around \$200,000, her interest. She has considerable property jointly with Kathleen Ward and Lucy Ward, which is hard to judge the value of the property. It is probably in excess, her interest, in excess of \$250,000.

Q. Could you give us any approximation, a very rough idea of the value of her estate situated within the jurisdiction?      A. The value of her estate?

Q. Yes.

A. Probably, just a guess, in the neighborhood of \$1,000,000.

Mr. Anthony: No further questions.

Mr. Collins: No questions.

### Cross-Examination

By Mr. Cass:

Q. Mr. Hustace, who has had the business affairs of Miss Kulamanu Ward in his control?

A. Miss Lucy Ward has been handling her affairs.

Q. How about Mr. Hapai?

A. He has been doing the bookkeeping work. The decisions have been made by Lucy Ward.

Q. Was there ever any occasion for Miss Kulamanu Ward to conduct her own business affairs?

A. She was incompetent to do so. I have known her for many years. She is incapable. She can't remember, can't [164] add, can't multiply, couldn't tell the difference between a stock or a bond, prob-

(Testimony of Edward Hustace.)

ably. She has never done any banking as far as I can remember.

Q. That is, for how long can you remember back?

A. I have been associated here in town since June, 1946, and I will base it from June, 1946, to the present date.

Q. How long have you known Miss Kulamanu Ward?

A. I have known her all my life.

Q. How long have you known that she couldn't do arithmetic problems, etc.?

A. Well, I would say since June 1, 1946, when I have had a good deal of contact with all three sisters.

Q. Now, do you know whether or not that inability to do arithmetic arises from any deterioration of mind or simply that she is in the position of a number of people who never have done business?

A. From deterioration of mind. She is very forgetful, and is at such an advanced state of mind that she couldn't do it. Probably she did know, and I am not saying that she isn't intelligent, or was intelligent. She probably was an intelligent woman in her day. But today, because of her advanced state of incompetency she couldn't do things like that.

Q. You were employed by the Victoria Ward, Ltd., at one time?

A. I was employed, yes.

Q. When did you terminate your employment?

A. November 30, 1948.

Q. What was the occasion of your termination?

[165] A. I was fired.

(Testimony of Edward Hustace.)

Q. Now, Mr. Hustace, the managing officers of Victoria Ward, Ltd., are Miss Lucy and Miss Kathleen Ward, aside from the directors, are they?

A. If you call them managing officers. They have the title of such.

Q. What are their offices in the corporation?

A. Miss Kathleen is president, the last time that I can remember, and Lucy is treasurer. Now, what has happened since I left the company, I don't know.

Q. Now, in 1946, when you became associated with the company, was anybody else managing the affairs of the company other than Miss Lucy and Miss Kathleen? A. No.

Q. And they have managed it right straight along ever since?

A. I managed it and they were supposed to take a back seat and let me do the work.

Q. And it was your idea that you were managing the company that caused you to get fired, wasn't it? A. That's right.

Q. And if Miss Kulamanu's stock in the Victoria Ward Company is placed in the hands of a friendly guardian, that is friendly to your interests or your family interests, you propose to upset the Victoria Ward Corporation and put it in your own offices, isn't that right?

A. I don't have to answer that.

Mr. Anthony: I object to that as incompetent. It has nothing to do with this case.

The Court: Has he any personal interest? To



(Testimony of Edward Hustace.)

that [166] extent the Court will permit the question.

A. I have not.

Q. Have you consulted any guardian concerning the operation of Victoria Ward, Ltd.?

A. Have I consulted any?

Q. Yes.

A. I have not done anything with this whole matter.

Q. Did you not present to Miss Kathleen Ward a statement of reorganization of the company just before you were fired, or shortly afterwards?

A. We have made statements. I believe the corporation has tried to do its best for the last 15 years to get reorganized. Mrs. Booth will testify to that. When I was hired that was one of the prime purposes, to try and reorganize the company. It has not been done.

Q. Isn't it true that you have sunk about \$100,000 of money in this market down on the waterfront contrary to orders?

A. Not contrary to orders. We operated without written instructions. We had verbal approval time and time again. That is the way the company operated.

Q. Who suggested the Hawaiian Trust Company to be trustee in this matter?

A. I think it was just a joint meeting of the people who entered the petition that thought some competent trust company should handle the affairs of Miss Kulamane Ward.

(Testimony of Edward Hustace.)

Q. Have you any particular reason for wanting Hawaiian Trust Company? A. No.

Q. Would you agree to another trust company? [167]

Mr. Anthony: I object to that. He is not even a petitioner. This is a witness. He doesn't have anything to say about this matter.

The Court: I think that is correct, Mr. Cass. He is not one of the petitioners here. It doesn't make any difference what he wants or what he doesn't want. It is a question of the competency of the person named.

Mr. Anthony: That goes for anyone's petition in this matter. It is up to the Court, eventually, to determine a trustee.

Mr. Cass: If there is no urgent reason for the nomination of Hawaiian Trust in this matter, however, we would consent to the appointment of any other trust company than the Hawaiian Trust to manage the affairs of Miss Kulamanu.

The Court: On what basis would you have any standing to make any objections? Do you want to prove the Hawaiian Trust is a conniver in this case?

Mr. Cass: I don't want to have to prove it. I am acting under instructions of my clients who are the sisters and greatly concerned with both Miss Kulamanu Ward and the Victoria Ward, Limited. Victoria Ward, Limited, is controlled by six different interests, equal interests, five of whom are active in the management of the corporation, as I understand it. Miss Lucy and Miss Kathleen represent

(Testimony of Edward Hustace.)

the active management of the corporation. The two petitioners here were directors of the board of the corporation and have become dissatisfied with the operation of the corporation. Now, if the guardian of Miss Kulamanu's [168] estate is for the present operators of the company, then there would be the continuing control of this corporation with them. If the guardian is a person who owes any obligation to the petitioners in this case, the control of the corporation goes to the petitioners.

The Court: What has that to do with this witness's examination?

Mr. Cass: It has to do this, if the Court please, that the examination of this witness is for the purpose of determining whether or not he and his mother have an outside interest which will be served by the appointment of a specific guardian for Miss Kulamanu, if Miss Kulamanu must have a guardian; and I wished the Court to be fully informed in connection with that, and the only way that I can inform the Court is by the questions asked, or or by permission of the Court, or addressing the Court as I am now.

The Court: Objection sustained.

Mr. Cass: Nothing further.

Mr. Anthony: No further questions.

(The witness was excused.)

Mr. Anthony: Your Honor, I have no further evidence unless the Court desires further proof, and I understand it has been indicated from the

bench and from counsel that a prima facie case warranting the appointment of a guardian of the property of the incompetent has been made out. As to who should be guardian, your Honor, I might state this to the Court: At the suggestion of the petitioners I approached an officer of the Hawaiian Trust [169] Company and ascertained that they had no interest whatsoever in connection with any of the parties in this case. They held no stock either as trustee or otherwise in this corporation, Victoria Ward, Ltd., which has been referred to in the testimony. Acting upon that I drafted the petition and ascertained from the Hawaiian Trust Company that they would accept the appointment if the Court found grounds for the entry of an order appointing a guardian and if the Court would approve. That is the status of that. There is nothing in Mr. Cass's statement in regard to any bias or prejudice or any reason, whatsoever, that has come to my attention, or I wouldn't state what I have just stated to the Court.

The Court: Has the guardian ad litem gone into this matter?

Mr. Collins: If your Honor please, that matter has been gone into by the guardian ad litem and an investigation was made of the various trust companies that might act in this capacity, and because of disqualifications or for other reasons it was the opinion of the guardian ad litem after investigation that the Hawaiian Trust Company would be a suitable guardian.

The Court: Did you ascertain as to whether or



not there were any conflicting interests in the Hawaiian Trust Company?

Mr. Collins: I did, your Honor, and the result of my investigation was that conflicting interests would arise principally because of the fact that the property owned by the corporation would be property that might be leased to interests which the Hawaiian Trust Company might [170] otherwise represent. But, as far as I can ascertain, that is the sole conflicting reason that appears. That factor was balanced against the other factors on other trust companies, and it was felt that even with that element present that they would be a satisfactory trustee. It would be more satisfactory than other trustees that would be qualified.

The Court: Anything further to go in in that matter that counsel wants to present?

Mr. Cass: If the Court please, the question of whether there is the necessity of a personal guardian in this case.

The Court: You mean as to the person?

Mr. Cass: As to her person, yes.

The Court: That isn't raised in the petition here. The petition simply asks for the guardianship of the property, Mr. Cass.

Mr. Cass: The question always arises when a person is adjudged incompetent.

The Court: Not necessarily so. The personal side may be satisfactorily being taken care of by the fact that the person is under the association of competent persons. I don't understand that anyone has raised the question as to Miss Lucy Ward's

competency, and the testimony here is that the incompetent is living with Miss Lucy Ward, and there is no indication that that condition would be altered in any respect.

Mr. Cass: I ask the Court's permission to file with the Court a petition for the appointment of Miss Lucy [171] Ward as guardian of her sister.

The Court: I really don't see any necessity of the Court going into the question of the appointment of a guardian of the person, Mr. Cass, at this time in connection with this proceeding. That would be something entirely different in character.

Mr. Cass: I ask the Court then to permit me to file a petition for the appointment of Miss Lucy Ward as guardian of the person and estate of Miss Kulamanu, and if the Court shall rule that her interest is conflicting, then for the appointment of Miss Kathleen Ward.

The Court: The Court would not listen to a petition by any of the sisters to be the property guardians because of the fact that they, being sisters with individual interests in the consideration of property, their interest would naturally be conflicting. It would need no proof.

Mr. Anthony: As far as the petitioners are concerned, my clients advise me that the personal situation is under control and insofar as they have been able to ascertain there is no need for the appointment of a guardian of the person at this time.

Mr. Carlsmith: May I state that my investigation indicates that there is no need for the appointment of a guardian of the person of Miss Kulamanu at this time.

The Court: I don't understand from the proof that has been before the Court that there has been any incapacity to the extent of being a personal charge upon the community that requires a personal guardian in view of the family taking care of that situation out of their own motives, that [172] the only question is the question of conservation of property for a person who is mentally incompetent, and here is a porperty in which all the sisters have an individual interest which could at any moment raise adverse problems. So the Court is prepared at this time to rule that the evidence is sufficient to show the necessity of a guardian of the property on the evidence adduced, and the investigation of the guardian ad litem of the situation, and the status of the trust company in the community, unless there be some showing of an adverse interest of such a character as to warrant a real conflict of interests in the handling of the matters by the Hawaiian Trust Company, it is a satisfactory appointee from the Court's viewpoint.

Mr. Anthony: There is the matter of the bond, your Honor, which the Court should pass upon, I believe.

The Court: Well, in the first instance, the Court has a knowledge of the over-all estimate of principal, but I haven't any information on the character of what the annual income is approximately.

Mr. Carlsmith: No bond, as far as we are concerned.

Mr. Anthony: I am informed that the income is approximately \$30,000 per annum.

The Court: Inasmuch as the sale of the property by the guardian would have to be by order of the Court, in that connection, the matter of \$30,000, if the Hawaiian Trust Company isn't able to stand for that, they better go out of business, and unless some further request is made upon a showing, an inventory or otherwise of further necessity, the Court will at the present time issue the order without bond.

(Hearing concluded.) [173]

I Hereby Certify That the foregoing is a full, true and correct transcript of proceedings on January 13, 1949, in the above-entitled matter.

/s/ L. T. CHAFFEE,

Official Court Reporter. [174]

In the Circuit Court of the First Judicial Circuit,  
Territory of Hawaii

No. 15,530

TRANSCRIPT OF PROCEEDINGS OF HEARING  
ON A MOTION TO SET ASIDE  
APPOINTMENT OF GUARDIAN

Before: The Honorable Willson C. Moore,  
Judge of the Fourth Division.

Saturday, March 12, 1949

HARRIET BOUSLOG,

Of the Firm of Symonds & Bouslog,

Appearing as Attorney for Miss Lucy K.  
Ward.



Whereupon the following proceedings were had:  
The Court:

This is in the Matter of the Guardianship of Harriet Kulamanu Ward, an incompetent person, and there is now pending before the Court a motion by Lucy K. Ward for an order appointing next of friend to represent the incompetent in a motion to set aside the appointment of the Hawaiian Trust Company, Ltd., as guardian of the Estate of Harriet Kulamanu Ward.

(Discussion between Court and counsel and the Clerk from Judge Cristy's court as to setting a date for a hearing by Judge Cristy.)

The Court: This motion for appointing next of friend—of Lucy K. Ward, as next of friend; for the purpose of hearing this motion for the removal of the Hawaiian Trust [175] Company or to vacate the order appointing Hawaiian Trust Company as guardian of the Estate of Kulamanu Ward, will be granted—and for that purpose only, the temporary order to show cause why this motion for removal—or motion to vacate the order appointing Hawaiian Trust Company as guardian of Harriet Kulamanu Ward will be set down for Wednesday, March the 16th, at 9 o'clock, and the Hawaiian Trust Company, as guardian, will be restrained from voting the stock in Victoria Ward, Limited, until after the hearing and decision on the merits of the motion—or before this Court can determine on the merits of the right of the movant to the relief prayed.

This Victoria Ward, Limited, what sort of business is that?

Mrs. Bouslog: Real estate business; land and stocks and bonds. In other words——

The Court: This does not tie up a business, or anything like that?

Mrs. Bouslog: No, it just continues it in status quo, your Honor.

The Court: Now, two days prior——

Mrs. Bouslog: I am planning to serve it at once, your Honor.

The Court: This is the 12th.

Mrs. Bouslog: Robertson, Castle & Anthony is attorney for all parties on whom the order to show cause is to be served.

I would like the record to show that the firm of Carlsmith & Carlsmith had entered their appearance for Lucy K. Ward, but she did not appear in that proceeding as the [176] next friend of Harriet Kulamanu Ward. I think it would be well for her to state under oath, though, what the situation in relation to the attorneys is.

The Court: All right. Stand up, Miss Ward, and be sworn.

### MISS LUCY K. WARD

was duly sworn, and testified as follows:

#### Examination

By Mrs. Bouslog:

Q. Will you please state your name?

A. Lucy K. Ward.

(Testimony of Lucy K. Ward.)

Q. Does the firm of Carlsmith & Carlsmith, or Mr. Carlsmith, represent you at this time?

A. No.

Q. Have you notified that firm?

A. I have, by 'phone and also by letter.

Q. And do you recall the date of the letter of notification?

A. (Witness produces letter.)

Q. What is the date at the top of the page?

A. March 5. I think I telephoned on the 1st.

Q. And do you wish the name of Bouslog & Symonds to be substituted as your attorneys?

A. I do.

(Witness excused.)

The Court: The firm of Bouslog & Symonds will be substituted as attorneys of record for Lucy K. Ward——

Mrs. Bouslog: As next friend.

The Court: In this particular proceeding.

(Adjourned.)

I Hereby Certify the above and foregoing, consisting of three pages, to be a full, true and correct transcript of my shorthand notes taken in the within-entitled matter on March 12, 1949, at the place therein set forth.

Honolulu, T. H., April 22, 1949.

/s/ R. N. LINN,

Official Reporter. [177]

March 16, 1949

The Honorable Albert M. Cristy,  
Second Judge Presiding.

Appearances:

J. GARNER ANTHONY, ESQ.,  
Of Robertson, Castle & Anthony,  
For Hawaiian Trust Co., Ltd.; Mellie  
E. Hustace and Lani W. Booth.

HARRIET BOUSLOG,  
Of Bouslog & Symonds,  
For Lucy K. Ward. [178]

Upon the Clerk calling the case, the following proceedings were had:

Mr. Anthony: If the Court please, I appear for Hawaiian Trust Company, Ltd., guardian. I also appear for the petitioners who petitioned for the appointment of the guardian, Mellie Hustace and Lani Booth. They join in the return of the Hawaiian Trust Company.

The Court: I haven't seen the return.

Mr. Anthony: It must be in the file, your Honor.

The Court: It hasn't come in here.

Mr. Anthony: If your Honor will excuse me a moment, I will get that. It was filed yesterday.

(Mr. Anthony procures document and the proceedings continue.)

Mrs. Bouslog: I take it from the return to the



motion and the order to show cause that the Hawaiian Trust Company and, as Mr. Anthony now says, the petitioners Mellie Hustace and Lani Booth deny the allegations of the petition. There is also another question raised by the return and that is the question of there having been a full and complete hearing, as the Hawaiian Trust Company alleges. They apparently feel no need for a further hearing. However, I call the Court's attention to the fact that this is not only a motion to vacate, but a motion to remove, and that this Court under provision 12529 has at all times and retains the right to hear a petition for the removal of a trustee. For that reason the movant in this case would like to proceed with the [179] proof of the allegations of their petition.

Mr. Anthony: If the Court please, this is not a petition for removal. This is a motion to vacate, in the first place. I don't think that there is any necessity for the taking of any evidence. There is a transcript available of the proceeding. Both Miss Lucy Ward and Miss Kathleen Ward appeared in this very court. They were represented by counsel. They acquiesced in the fact of the incompetency. There was evidence produced before the Court. Judge Moore was meticulous in appointing a member of the bar of this Court as guardian ad litem of the alleged incompetent, and the petition was filed, I believe, in November of last year. The guardian ad litem asked for time, which was given him, to study the matter. He employed a competent member of the medical profession, a psychiatrist,

and he examined the alleged incompetent and made a report, which report was offered in evidence and received by this Court. In addition to that there was the testimony of lay witnesses as to the fact of incompetency. Therefore, there is nothing before the Court, as I see it, in this motion. This motion goes on ad nauseum in a series of rather slanderous, scandalous remarks, all of which are irrelevant to any issue in this case. They talk about the alleged misrepresentations, which of course do not exist, and there is no facts alleged as to any misrepresentations to this Court. I serve notice on counsel now that we hold counsel accountable for that kind of remarks in a pleading, even though she may be protected by the laws of libel and slander. [180] As I see it, there is nothing on which to take evidence. There is no allegations in the motion other than bald conclusions of law and these charges of misrepresentations supported by no facts.

These movants here, the movant and her sister, had a full and complete hearing. They had ample notice. They appeared in this Court by counsel, and if they were dissatisfied, then was the time for them to make known their dissatisfaction. Not having done so, I say that it is highly irregular and improper to proceed in this manner to take evidence to re-examine the order and findings of this Court.

The Court: I have difficulty, Mrs. Bouslog, in understanding the character of your proceeding. The record in this Court, as counsel has indicated, and which the Court has refreshed its recollection by a reading of the transcript of what occurred, the

Court had a full, open Court hearing in which your present client was represented by adequate counsel and was given an opportunity by interrogation by the Court as to whether the evidence before the Court at that time was such that he desired to contest the major issue in that hearing as to whether the alleged incompetent was incompetent; and counsel with that opportunity indicated affirmatively to the Court that he did not desire to examine witnesses further that were produced, and more than that, that the psychiatrist whose report was offered to the Court was accessible to him in lieu of examination of the individual as a witness in open court, that the conclusions of [181] incompetency were acceptable and accepted. So that the issue at that proceeding of the incompetence of the person Hattie Kulamanu Ward was before the Court on prima facie evidence conceded by the counsel for your client as being sufficient, and not desiring any further evidence on it, the finding then stood, which by inference indicated that your client over a period of years had acted under a power of attorney, not disclosing the incompetence, which brings the matter in this proceeding a little bit closer home that she is before this Court with unclean hands, assisted by you.

Mrs. Bouslog: I would like to note an exception to the remarks of the Court. The whole basis of this petition is that there was not a full and fair hearing. We will show, if the Court will permit, in the interests of this incompetent, evidence to be adduced before this Court that there were conceal-



ments of the material facts that the Hawaiian Trust Company is not a suitable trustee in this case.

The Court: Now, Mrs. Bouslog, I have got to interrupt here. I am not dealing in generalities. What concealment of what facts are you proceeding to indicate that you are prepared to show?

Mrs. Bouslog: I first want to say to your Honor that this is a motion by Lucy K. Ward, who has been appointed next of friend of Hattie Kulamanu Ward, to bring an action against the appointed guardian. It is more than a motion to vacate the order. There are allegations here which show that there was not—I take it through [182] no fault of this Court, but due to the fact that the parties who understood and knew of the affairs of Hattie Kulamanu Ward were not present in this Court, that their interests were not represented by the counsel who were present in some respects. But this is not an action by Lucy K. Ward on her own behalf, your Honor. This is an action by Lucy K. Ward on behalf and in the interest of her sister's estate.

The Court: What I am asking first, please, the issue as to the incompetency of Hattie Kulamanu Ward has been determined. I am not going back into a reopening of that particular issue, Mrs. Bouslog.

Mrs. Bouslog: We ask the Court to do that.

The Court: That is res judicate in this proceeding.

Mrs. Bouslog: Your Honor, this Court always has inherent powers to reconsider its own actions when facts are brought to its attention which show



that the parties did not have a full, fair and complete hearing, and that they were not apprised——

The Court: That is what I am asking you. What facts as to the competency of Hattie Kulamanu Ward does either your pleadings or anything that you said indicate that the Court was not apprised of or the party Miss Lucy Ward didn't have full opportunity with her counsel to present at the former hearing?

Mrs. Bouslog: We will show that when the guardian ad litem, and we offer to prove by testimony adduced in this Court, that when the guardian ad litem appointed by [183] this Court and the psychiatrists whose reports were received by this Court, that they interviewed in secret this 79-year-old woman, whose sole interests of her estate is the problem before this Court. We are not concerned with of what are the interests of Lucy K. Ward in her own right, but this Court is solely concerned with what must be done to properly protect the property of the ward, of a ward for whom this Court has appointed a guardian.

We will show in the course of this hearing, if the attorney for the petitioners and the Court does not take the position that they do not care to hear any evidence that might be adduced to show that there was not a full and fair and complete hearing.

The Court: You haven't answered my question, please——

Mrs. Bouslog: We have set forth in the petition——

The Court (Continuing): ——as to whether or

not you have any evidence, and will you state *sere-  
atum* what it is, that Hattie Kulamanu Ward is  
competent?

Mrs. Bouslog: We have evidence, your Honor,  
that she has been examined by a competent alienist  
other than that alienist whom the guardian ad litem  
employed. I have a report from that psychiatrist  
which I intend to offer to the Court in respect to  
the degree of competency of Hattie Kulamanu  
Ward at the proper time in the course of these  
proceedings.

The Court: An examination taken when?

Mrs. Bouslog: An examination taken on [184]  
March 10, 1949.

The Court: Who is the person that you intend  
to offer as such witness?

Mrs. Bouslog: Robert Jacobson, M.D.

The Court: That Hattie Kulamanu Ward is  
competent to handle her own affairs?

Mrs. Bouslog: I have a statement by Dr. Jacob-  
son——

The Court: I am not interested in a statement.  
I am interested in the evidence.

Mrs. Bouslog: To show the degree of competence  
of Hattie Kulamanu Ward, in which he reaches the  
conclusion that she is competent to determine whom  
she wishes to handle and to represent her in her  
affairs, although she needs help in the management  
of her affairs.

I also want to call the Court's attention to the  
fact that this is more than a motion to vacate the  
prior proceedings. This is a motion to remove a

trustee, or a motion to remove a guardian. Under the laws of this Territory, Section 12529, this Court not only has jurisdiction, but has the duty to listen to the testimony that can be adduced to show the unfitness or the grounds for removal of a trustee or guardian which has been appointed, and the authority is clear that that question of removal may be brought up by motion in the same proceedings in which the guardian was appointed in the first instance. We have to offer to this Court, and we make an offer to prove at this time, the truth by facts and documentary evidence of all the allegations contained in this motion. This is [185] a verified motion signed by Lucy K. Ward as sister, attorney-in-fact and next of friend of Hattie Kulamanu Ward. We offer to prove all the allegations of this verified petition. We offer to show that there is no conflict of interests between Lucy K. Ward and Hattie Kulamanu Ward; that she has managed her estate for a period of years at the specific request of Hattie Kulamanu Ward; that in the course of that time she has built up the estate of Hattie Kulamanu Ward greater than her own; that she has never speculated or in any way taken any chances with the estate of Hattie Kulamanu Ward; that she has, in the course of that time, never charged one commission or fee for the management of that estate; that she has shown her good faith over the years in the management of the property of her sister by showing that she actually purchased on account of her sister's estate the largest block of shares in Victoria Ward, Limited,

a family corporation which this whole proceeding is a struggle to gain control of.

In other words, we will show that this petition was not brought in the interest of Hattie Kulamanu Ward. It was brought for the purpose of using the stock which she holds in a family corporation as a means of control of the family corporation; that it is not in the interest of Hattie Kulamanu Ward that the Hawaiian Trust Company be appointed and act as such guardian. We will show that Lucy K. Ward, through competent management, through no charge to Hattie Kulamanu Ward, has for years managed her estate and built it up; that the commissions [186] of the Hawaiian Trust Company alone, with the life expectancy of this ward, will exceed the income of the estate for more than one year; will amount, in fact, to somewhere in the neighborhood of \$30,000 for the life expectancy of this particular ward of the Court.

We will show that there is a direct and absolute conflict of interests between the Victoria Ward, Ltd., in which company Hattie Kulamanu Ward has a large block of shares; as a matter of fact, a sufficient block of shares, as alleged in the petition, to swing the control of the company to the Hawaiian Trust Company, whom they represent and their attorneys represent. We will show that by the by-laws of Victoria Ward, Ltd., they are engaged in essentially the same business as the Hawaiian Trust Company, that their very purposes of organization, that they engage in the same kind



of management of real estate that the Hawaiian Trust Company does.

We will show almost section for section that the statutory provisions of the Revised Laws of Hawaii on the powers of trust companies are the same business in which Victoria Ward, Ltd., operates; that a trust company who is managing this estate would have a direct conflict of interests with the Victoria Ward, Ltd., and the shares of stock which Hattie Kulamanu Ward holds, by the very nature of which they could not be a competent and suitable trustee.

We will show that the excessive costs to this ward of this Court is not justified under the facts and circumstances of this case; that there is no [187] necessity for the appointment of a trust company with the statutory commissions and the other allowable expenses which the Court has power under the law of the Territory to allow will eat up the income and principal of this estate unnecessarily, when there are those who for years have looked after, who have cared for, who have given love and affection to Hattie Kulamanu Ward, who have always acted in her interests, who have never taken any risk with her capital, who have built up her estate over a period of time in such a way that no one could doubt their good faith, competence, their suitability and their skill in taking care of the interests of Hattie Kulamanu Ward.

The Court: You are still dodging the question, Mrs. Bouslog, I asked you in the first instance, and I would like it clarified. The proceeding in the Matter of the Guardianship of Hattie Kulamanu

Ward, an incompetent person, is the original proceeding and the proceeding that we are still in. Are you in a position to show this Court that Hattie Kulamanu Ward is competent to manage her own affairs?

Mrs. Bouslog: I am in a position to introduce evidence on which this Court will pass as to the degree of competence of Hattie Kulamanu Ward.

The Court: It is not a question of degree; it is a question of competency or incompetency.

Mrs. Bouslog: I think it is not, your Honor, under the statutes of this Territory. The question is [188] the necessity, the desirability. The interest of Hattie Kulamanu Ward is before this Court and for this Court to protect.

The Court: The first question is, is she competent or incompetent and the Court has had a full hearing upon that point.

Mrs. Bouslog: Your Honor, if what went on before this Court can be called a full hearing then, and the Court does not desire to be apprised of facts of which it was not apprised in the first instance, then of course anything that counsel would say would have no influence upon the Court.

The Court: Well, it is not a question of what the Court wishes, Mrs. Bouslog. It is a question that counsel can't play fast and loose with proceedings in a court of equity through a change of counsel of the parties and rehash something that has been given an opportunity to be heard, and concluded with the conceding and acquiescence of counsel for the same client, and then by change

of counsel start in to reopen and rehash something that was acquiesced in which the parties movant failed to present. It had no excuse as presented in the pleadings as to why that was not presented to the Court in the first instance.

Mrs. Bouslog: In the first place, your Honor, this is a motion not by Lucy K. Ward, but by Lucy K. Ward as next of friend of Hattie Kulamanu Ward. It is not a proceeding in her own personal capacity to protect her own business interests, but it is a suit adverse to the [189] Hawaiian Trust Company, the guardian here, to remove a guardian who is unsuitable. Now, whatever hearings this Court may have held before in respect to the issue of competency, in respect to the matters that were before this Court on the testimony of the petitioners before has no relevancy to the question of the right of this Court given by statute and existing inherent in this Court to at all times consider the suitability of a trustee or guardian appointed by the Court. Perhaps if your Honor would take a look at Section 12529, Revised Laws of Hawaii, by statute it says that this Court has the right and the duty and the jurisdiction to re-examine on the motion of parties whose interests are affected the suitability of a trustee or a guardian who has been appointed by the Court. So even if your Honor says that you do not care to hear, because of prior proceedings herein, any further testimony as to the issue of competency of Hattie Kulamanu Ward, your Honor still has vested by statute the duty on proper application, and the authorities are clear



that a motion in the same proceeding is a proper method to seek the removal of a trustee or a guardian who has been appointed. Your Honor, as a matter of fact, it would be impossible in a collateral proceeding to attack, but the law assumes, and particularly in the field of trustees and guardianship matters, that the Court at all times retains control and is guided and acts in the interests of the person for whom the Court has appointed a guardian.

We will show that the question of the [190] suitability of the Hawaiian Trust Company was not fully heard. We will show acts and conduct of the Hawaiian Trust Company since its appointment which indicate its conflict of interests and its unsuitability to continue as guardian of the Estate of Hattie Kulamanu Ward. We are prepared to prove not only the allegations of our petition which Mr. Anthony is very eager not to have proven in Court, although he easily labels them as unprovable, yet he doesn't seem inclined to permit the Court to pass on the facts which we will present.

I cannot say to your Honor that we will adduce testimony which shows whether or not there was any necessity for the appointment of a guardian. I can say we will offer to this Court testimony of an expert witness who has examined Hattie Kulamanu Ward and who has prepared a report here, who can be brought here in person. It is not for counsel; it is not for Lucy K. Ward to determine the degree of the competency of Hattie Kulamanu Ward. It is for the Court after hearing evidence, to determine——



The Court: The Court will shorten the matter right now. The Court will not go back of the proceeding in which Lucy K. Ward appeared and had full opportunity with counsel present to advise the Court on any matter as to the competency or incompetency and failed to do so. The Court will not go back into the question of the determination of facts that the person Hattie Kulamanu Ward is an incompetent person requiring a guardian to [191] administer the affairs of her estate.

Mrs. Bouslog: Will your Honor permit the movant in this case to show that the instructions given to her attorney were disobeyed in the proceedings which she did not attend?

The Court: I don't think that that is material to the question. It is not a question of whether Lucy K. Ward is at odds with her former counsel for some reason or other. The question is that the matters were before the Court on the question of competency, and all parties had an opportunity there to present to the Court any desires or instructions, and the matter was heard and determined. A second feature of it was, and the record so bears me out, that upon having determined the issue of incompetency upon that hearing, the Court requested the matter of the appointment of a guardian to be gone into, and when the guardian ad litem reported to the Court that he had made full investigation of the various possibilities in the administration of such a sizeable estate and reported that in his judgment the Hawaiian Trust Company was a proper person, the Court then in-

quired of counsel whether there was any objection to the Hawaiian Trust Company and counsel for Lucy Ward even suggested to the Court as far as that side of the picture was concerned they were prepared to waive bond, indicating that if there was any reason why the Hawaiian Trust Company was an incompetent party to be named guardian, it certainly was misrepresented to the Court by Lucy Ward herself through her counsel that Hawaiian Trust Company was competent. [192]

Mrs. Bouslog: I find no such statement in the record, and I call the Court's attention to the fact that the guardian ad litem at the time pointed out a conflict of interests between the Hawaiian Trust Company and the estate.

Mr. Anthony: That is not true, your Honor. I have sat here and I have listened to these repeated misstatements of counsel. There is one thing I would like to call your Honor's attention to, and I think I am entitled to interrupt this dissertation that we are having here. I didn't know until a few minutes ago that there was such a person as a guardian ad litem. I just received, the Clerk just handed me the file. I find in the file an order signed by Judge Moore, papers which were not served on counsel in compliance with the rules of this Court, just exactly as the temporary restraining order. That is the framework that we are operating under. Neither the motion, nor the temporary restraining order, nor the motion for appointment of the guardian ad litem was served, and I tell this Court that I was in consultation with Mrs. Bouslog

Friday and Saturday, the very time she was contemplating and about to file this proceeding, and she didn't have the courtesy to comply with the rules of this Court in the service of these papers.

Mrs. Bouslog: Your Honor, copies were placed in the hands of a serving officer after they were issued Saturday morning. The petition was drawn Friday evening and application was made to the Court Saturday morning and copies were immediately placed in the hands, copies of the motion of Lucy K. Ward, the order to show cause, and [193] temporary restraining order, and according to the records, the report that I have from the sheriff, they were served.

Mr. Anthony: That is not correct. Let's nail these one at a time. The paper that I am talking about is a motion for the appointment of a guardian ad litem. In the ordinary practice in this court it should bear the signature of counsel. It does not, and I have not received it.

Mrs. Bouslog (Producing document): Here is—That is the service.

Mr. Anthony: I am talking about the appointment of a guardian ad litem, Mrs. Bouslog.

Mrs. Bouslog: There is a copy of a motion of Lucy K. Ward, that is an ex parte motion for order appointing next of friend. There is no requirement that notice be served for the appointment of a next of friend.

Mr. Anthony: Now we have it, your Honor. It was done without notice and without service. I assume ultimately I may get a copy.



Mrs. Bouslog: Your Honor, this is a copy of the motion of Lucy K. Ward for certain relief, an order to show cause and a temporary restraining order. It alleges on its face that Lucy K. Ward is the attorney in fact and next of friend of Hattie Kulamanu Ward. On its face it alleges that she has on this day applied to the Court for permission to file this motion as next of friend of Hattie Kulamanu Ward, who is at the present time unable to act in her own behalf.

The Court: Well, Mrs. Bouslog, right [194] there the pleadings indicate something which it seems to me ought to be emphasized in the record we are making, and that is that you, as counsel for Lucy K. Ward, purport to present to Judge Moore who was not a party to the proceedings in the hearings of the incompetency and was acting during my sickness, who knew nothing of what had occurred in that hearing, an allegation that Lucy K. Ward was acting as attorney in fact for a person who had theretofore been found incompetent.

Mrs. Bouslog: No, your Honor, I say for permission to file this motion as next of friend of Hattie Kulamanu Ward, who is at the present time unable to act on her own behalf.

The Court: Please don't dodge the issue that I am indicating to you that you present Lucy K. Ward acting as attorney in fact in part of your allegations.

Mrs. Bouslog: Attorney in fact, next of friend, sister.

The Court: How in heaven's name from any



conceivable legal situation can a party continue to act as an attorney in fact after a guardian has been appointed for an incompetent?

Mrs. Bouslog: That is the reason, your Honor, why we applied to the Court for Lucy K. Ward's appointment as next of friend on the ground that the interests of the appointed guardian were adverse to the interests of the ward of this Court, and therefore someone besides the guardian has to present a motion to remove that guardian. [195]

Mr. Anthony interrupted counsel at the time when I was pointing out that even the guardian ad litem in this proceeding pointed out the conflict of interests between the Hawaiian Trust Company and the estate of Hattie Kulamanu Ward. On page 20 of the transcript—and unless Mr. Anthony in this respect wishes to say that the court reporter did not accurately transcribe, I will read what was said at that time. (Quoting from transcript.)

“The Court: Did you ascertain as to whether or not there were any conflicting interests in the Hawaiian Trust Company?

“Mr. Collins: I did, your Honor, and the result of my investigation was that conflicting interests would arise principally because of the fact that the property owned by the corporation would be property that might be leased to interests which the Hawaiian Trust Company might otherwise represent. But, as far as I can ascertain, that is the sole conflicting interest that appears.”

Well, that is a conflicting interest which appears on the face of the former record. Now we want to show that that is not the only conflicting interest between the Hawaiian Trust Company. We set forth in our verified petition the fact that the Hawaiian Trust Company represents other interests, specifically interests that are adverse not only to Hattie Kulamanu Ward, but are adverse to Victoria Ward, Ltd., in which Hattie Kulamanu Ward holds a large and controlling block of stock.

We offer also to show to this Court that the very purpose of Victoria Ward, Ltd., are adverse and [196] antagonistic to the Hawaiian Trust Company. It appears from the recorded articles of association of Victoria Ward, Ltd., and the powers of a trust company as set forth in the Revised Laws of Hawaii in respect to the nature of business in which a trust company does engage in the Territory.

The Court: Are you purporting to show that the Victoria Ward, Ltd., is a trust company?

Mrs. Bouslog: The Victoria Ward, Ltd., engages, is in competition or engages in the same kind of business which the Hawaiian Trust Company engages in, in respect to the management of real property, the purchase of securities, the representation of others, yes.

The Court: You haven't again answered my question directly, but in your usual manner you have evaded it. Are you purporting to show that the Victoria Ward, Ltd., is a properly constituted trust company under the laws of the Territory of Hawaii?

Mrs. Bouslog: I will show the content of the articles of association of the Victoria Ward, Ltd.

The Court: Can't you answer a direct question, Mrs. Bouslog?

Mrs. Bouslog: Well, I will show your Honor facts which I think show that, but your Honor is the final judge. You decide whether or not there is a conflict of interests. I would like to have you decide it after you see the articles of association of Victoria Ward, Ltd. [197]

The Court: But what I am asking you is whether the Victoria Ward, Ltd., has complied with the laws as a trust company. Has it or hasn't it?

Mrs. Bouslog: It is organized, established, recognized and has never been questioned since its organization in 1930 as Victoria Ward, Ltd., operating and doing the business as set forth in its articles of association.

The Court: I see that I can't get any answer from you, Mrs. Bouslog. Let the record show that counsel refuses to answer questions the Court propounds to it.

Mrs. Bouslog: Let the record show that counsel takes exceptions to that remark. When the Court says to counsel that "Are you purporting to show that Victoria Ward, Ltd., in violation of law operates as a trust company," I think that the Court has asked an improper question of counsel. Counsel, rather than replying to the Court in another manner, chose to offer to the Court the copies of the articles of association. I do not believe that the question of the Court was proper. The question of



the Court indicates a bias and prejudice and an unwillingness to hear the facts and after having heard the facts to rule upon the matters before it.

I will offer the Court at this time photostatic copies from the treasurer's office showing the filing of the articles of association of the Victoria Ward, Ltd., and the Court may, from an examination of those articles of association and from an examination of the statutes of the Territory on the power of trust companies, [198] determine for himself whether he feels there is anything——

The Court: Do I understand, Mrs. Bouslog, that you refuse to put yourself and your client on record as to whether you are purporting to show or offering to show the Court that the Victoria Ward, Ltd., is or is not duly incorporated to act as a trust company within the Territory of Hawaii? I need to know your position, not what the Court's position might be.

Mrs. Bouslog: I want to show that the articles of association of this corporation show that its purposes are as follows: (Quoting from document.)

“(a) To acquire by purchase, lease, hire, gift, devise or bequest, or in any other lawful mode, and to possess, hold, use, enjoy, improve, manage, control, grant, sell, exchange, lease, rent, mortgage, pledge, hypothecate, convey and otherwise dispose of, and generally deal in, real and personal property, corporeal or incorporeal, of every sort, and wheresoever situate, and all rights thereto and interests therein;

“(b) To acquire and take over any of the



property real and personal of any nature which the parties hereto or any of them may convey to this corporation, and to possess, hold, use, enjoy, improve, manage, control, grant, sell, exchange, lease, rent, mortgage, pledge, hypothecate, convey and otherwise dispose of the same;

“(c) To purchase on commission or otherwise, subscribe for, hold, own, sell on commission or otherwise, or otherwise acquire of, dispose of, and generally to deal in, shares, stocks, bonds, notes, debentures, commercial [199] papers, obligations and securities of itself and of other corporations and persons, and also any other securities or evidences of indebtedness whatsoever, or any interests therein, and while owner of the same to exercise all rights, powers and privileges of ownership, including the right to vote;

“(d) To loan money, and negotiate loans, on the security of mortgages, deeds of trust, bonds or otherwise, hypothecation of real and personal property, or without security;

“(e) To borrow money and to pledge, mortgage or hypothecate the whole or any part of its property, real, personal or mixed, to secure the payment thereof; and to issue bonds, debentures, debenture stock, or other obligations either secured by mortgage, trust deed or other appropriate instrument or unsecured, and to create a sinking fund to secure the redemption of any mortgage, hypothecation or pledge made or executed by it, and the payment of all debts,

notes, bonds, debentures, debenture stocks or other evidences of debt made and issued by it;

“(f) To make, draw, accept, endorse and/or execute negotiable instruments;

“(g) To purchase, hold, own and sell shares and property of other corporations, firms or individuals, either absolutely or by way of pledge or mortgage, and to have and exercise all rights and privileges incidental thereto, and to purchase, acquire and deal in stocks, bonds, securities of any government or state, whether foreign or domestic;

“(h) To manage, act as agents, factors or trustees for estates, companies and persons;

“(i) To aid, in any manner, any corporation of which any [200] of the bonds or other securities or evidences of indebtedness or stock are held by this corporation, and to do any acts or things designed to preserve, protect, improve and enhance the value of any such bonds or other securities or evidences of indebtedness or stock;” Etc.

The articles of association go ahead. It is clear that on its face the Victoria Ward, Ltd., the very nature of its business puts its interests in conflict with the Hawaiian Trust Company.

The Court: You still haven't answered my question. All that you have read, as I have been listening carefully, doesn't indicate any power to act as a fiduciary for others as provided in the statute for trust companies. All that you have so far read is

the ordinary pro forma powers of the corporation to engage in business as owners and operators, but to act as fiduciary for others under the trust company act, there is not a word.

Mrs. Bouslog: This corporation engages in the management, the sale, the leasing of real estate. The Hawaiian Trust Company likewise under its powers as a trust company leases, holds and conveys real estate.

The Court: Are you still dodging the question I have asked you as to what your position is, whether the Victoria Ward is incorporated under the trust company statute or not?

Mrs. Bouslog: Victoria Ward, Ltd., is incorporated under the general corporation laws of Hawaii.

The Court: Can't you answer my question?

Mrs. Bouslog: I say it is incorporated under the [201] general corporation laws.

The Court: And not under the trust company statute?

Mrs. Bouslog: It is not incorporated as a trust company.

The Court: Thank you. It has taken a half hour to get that answer from you.

Mrs. Bouslog: It is obvious in the case of the company, your Honor, and I was trying to get your Honor to draw his own conclusion from the purposes stated in the articles of association, the trust companies under the laws of this territory have been given certain powers by statute. The Hawaiian Trust Company engages in exactly the same busi-



ness as the Victoria Ward Company, Ltd., in respect to the management of property. The Victoria Ward Company, Ltd., and Hattie Kulamanu Ward own large tracts of land throughout the Territory. There cannot but be a constant ever present conflict of interests between two companies which are operating in the same kind of business. And not only that, we expect to show to this Court that the Hawaiian Trust Company has already indicated its intention of putting one of its officers as a member of the board of directors of the Victoria Ward Co., Ltd.

The Court: May I stop you right there and ask you what else could it do? Hattie Kulamanu Ward, who is listed as a director in your own pleadings here, has been declared incompetent, and she owns practically a third or fourth of the stock. What else could the guardian do?

Mr. Anthony: This argument is proceeding as though by virtue of this appointment the Hawaiian Trust Company, obtaining the controlling interest in Victoria Ward, Ltd., [202] that——

Mrs. Bouslog: Exactly, that is our contention.

Mr. Anthony: Let me finish, will you please? And that having thus obtained the controlling interest, someday in the future there may arise a conflict between one of the trust estates of Hawaiian Trust Company and the business of Victoria Ward, Ltd. It argues that there are sui juris stockholders beyond the Hawaiian Trust Company as alleged in this very motion. We have only got some 30% interest or less than that in shares of this corporation.



All of this stuff that is alleged in this motion is wholly out of place.

I have not sought to deny in the return *seriatum* the irrelevant falsehoods. I will mention one just to give your Honor an inkling of the liberality with untruth that this movant is indulging in. They make the curious allegation that I am the regularly retained attorney for the Hawaiian Trust Company. It is not denied in the return. Of course everybody in the courtroom knows that is nonsense. It makes the same allegation about Mr. Ernest Cameron. We have not denied the irrelevant allegations in this motion. If we can just fix our minds on what the issue here is, whether or not there is any issue, I think we could get further and dispose of this proceeding. The whole purpose of this is to delay the orderly administration of this guardianship and to permit this attorney in fact who, with full knowledge of the facts of incompetency, for a number of years has held onto the documents and papers and records and assets of the ward's estate, the incompetent's estate, and at this very moment neglects to turn them over to the duly appointed guardian of this [203] estate, to such a degree that we can't even file an income tax return.

Mrs. Bouslog: Your Honor, the petition upon information and belief alleges that Mr. Anthony has been, on behalf of the Hawaiian Trust Company, handling the affairs as they pertain to Victoria Ward Ltd. We intend to prove on what our information and belief is alleged, if the Court and Mr. Anthony will permit us, to introduce proof as to

the basis on which we allege on information and belief. That is the opportunity which we are seeking from this Court. The Court asked what else could the Hawaiian Trust Company do except apply for a director. I have here a number of cases which show that it is improper for a trustee or guardian who has an interest in a conflicting business, or where there might be a conflict, to make himself an officer, a salaried officer or director of a family corporation which represents part of the assets of the estate.

I also call the Court's attention to the fact that there is the question of a violation of the Clayton anti-trust laws in the event this trust company gets involved in the Victoria Ward Ltd.

Mr. Anthony: How about the Wagner Act?

Mrs. Bouslog: I would like to say this to this Court, for I am in a curious position in this particular case in coming and applying, because of an emergency situation, to Judge Moore in the absence of Judge Cristy to whose office I first came for a temporary restraining order to prevent the voting by Hawaiian Trust Company until what I thought was going to be a hearing on the merits of this motion for a [204] temporary restraining order. Now perhaps I have squealed louder in the Territory against ex parte restraining orders than any other person, and Mr. Anthony and other law firms in the Territory have felt that ex parte restraining orders were wonderful, that they should get them within the first few minutes of any labor dispute in the Territory.

The Court: Please, I am not interested in that. Come down to the issues in this case, will you please.

Mrs. Bouslog: I want to say, the Court indicated that I applied to Judge Moore instead when I should have applied to this Court. I want the record to show that I did come to the chambers of this judge and was advised that he was ill, and because the matter for which we needed a restraining order was a meeting of the stockholders at which the Hawaiian Trust Company was to vote the stock of Hattie Kulamanu Ward on Monday, and there wasn't time to wait and prepare and present to this Court prior to the holding of that stockholders meeting, and because of the necessity and urgency we applied on our verified petition to Judge Moore for an order to show cause in the absence of this judge from his chambers. The motion sets forth in full the reasons for the necessity of the issuance of an ex parte order.

The Court: Well, I think it is time to call this proceeding to a brief termination. On the return that has been made to your order to show cause it points out that the Court had, and the Court is aware by the transcript of proceedings which was prepared and which I understand you have a copy of and procured a copy of before you even presented these papers to Judge Moore, that there had been a full hearing [205] in which Miss Lucy Ward, Kathleen Ward and all other Wards were represented by counsel. The question at issue of competency was gone into, and it was determined that the party Hattie Kulamanu Ward was incompetent.



It was consented to by the attorneys representing all the parties before the Court. The issue of the competency of the Hawaiian Trust Company as a proper guardian to be appointed of the property was gone into, and by consent of counsel for Miss Lucy Ward that appointment was made, and even over against the recommendation that the appointment be made without bond, the Court fixed a \$10,000 bond for the guardian so appointed; that upon the very facts that you have indicated it would have made no difference to the Court if the Court had known that small shares of stock were owned by other parties of the Ward family in the Hawaiian Trust Company, as there is nothing indicated in your pleadings or otherwise that there was any conspiracy in which the Hawaiian Trust Company was a party to it to affect adversely any of the interests of the ward; that the issues therefore of competency of the ward and competency of the guardian were gone into, and by the consent of the parties before the Court the appointment was made, and nothing new in your motion indicates that the guardian so appointed has violated any of the confidences and trusts as guardian, but that it is simply proceeding to exercise as it would have a duty to exercise as guardian the rights of a stockholder in Victoria Ward Ltd. and secure the removal of the incompetent of the board of directors in some adequate proceeding, which might be obtained as a proper exercise of that duty of the guardianship. [206]

Now the court of equity is not supervisor of all the corporations in which the Wards have stock.



That is the duty of the guardian to protect those stock interests, not the duty of the Court to sit as a sort of ersatz director of the actions of the guardian, unless upon an accounting, upon a showing that there has been an improper exercise of those obligations, and that on the record made before this Court by your own motion Miss Lucy Ward, who before the original hearing appeared by inference of the evidence adduced, in the consent of her counsel in waiving any objection thereto, has been in the position of concealing from the Court the incompetency of her sister over a period of years.

There is one other factor that is in this record which I want to emphasize and comment upon. There has now been filed an inventory by the guardian showing that in 1947, during the period in which the evidence before this Court at the former hearing, indicated that the sister had been incompetent over a period of years, and Lucy Ward, acting under a power of attorney given years before by such an incompetent person, mortgages large values of stock of her sister to take a joint tenancy in a ranch, a joint tenancy with rights of survivorship, in other words, feathering her own possible bed in case she survives her sister, to get into her hands a property that according to the very note has some \$350,000 or \$400,000 of value, hocked in the ward's property, a thing which the guardian of the property of Hattie Kalumanu Ward will have to go into as to whether such a deal is a proper deal in the protection of the rights of the ward. And that person, your client, now by a change of

counsel purports [207] to start a proceeding as next of friend, and the Court at this time is prepared to vacate that order of appointment of next of friend at this time without any further hearing, but upon the record made in this Court; that the order heretofore entered by Judge Moore in my absence, appointing Lucy Ward as next of friend of Hattie Kulamanu Ward was inadvertently executed by Judge Moore without knowledge of the record here and induced by counsel who should have presented to the Court full knowledge and have had before the Court the counsel that she knew was counsel of record for the guardian so appointed, and her failure to do so indicates a course of conduct of counsel which I will not further comment upon.

Upon the record before this Court I can find nothing which justifies this Court to reopen the question of incompetency, or reopen the question of competency of the guardian appointed.

Mrs. Bouslog: Your Honor, I first want to take exception and to say that I believe that your Honor has manifested against Miss Lucy Ward a bias and a prejudice which shows that your Honor, with the feelings you have, should have disqualified yourself to act. There is not one word in the hearing of the transcript which was made before your Honor, there is not one word here except the slanderous statements which Mr. Anthony may have made about the purpose of this proceeding to indicate that Miss Lucy Ward has done anything except to care properly and fully, free of charge,

not at the commissions the way the Hawaiian Trust Company charges commissions, but for years she has acted in behalf of her sister as a friend, as a sister; she has lived in the same house with her. She has lived in peace [208] and harmony with her. She has built up her estate from a small estate to a large estate, and for this Court to say in the absence of any word in the transcript, any testimony of any kind that Miss Lucy Ward has for years concealed the incompetency of her sister when all your Honor knows about the degree of competency of Kulamanu Ward, or at least all the record shows are three lines from a report of a psychiatrist employed not by those who love and are interested in Hattie Kulamanu Ward, but appointed by an attorney appointed by her who in turn appoints someone and who acts as if the people whom Hattie Kulamanu Ward trusts and loves and lives with are foresworn enemies.

Now, your Honor, I think that your Honor's remarks directed to Miss Lucy K. Ward were highly improper, and that they do indicate such a prejudice that your Honor should permit some other judge to hear the matters raised by this petition. I also want to take exception to the vacation of the order appointing Lucy K. Ward next of friend for Hattie Kulamanu Ward to represent her interests which are adverse to the guardian, and at this time I would like to serve notice that an appeal will be taken from the ruling of this Court, and I would like to state for the record the offer of proof of what we offer to prove to this Court would this



Court and would the attorney for the petitioners be willing to hear the facts. I would like to state for the purposes of the record on appeal what we intend to prove.

The Court: I am listening to your offer of proof, if you want to make it of record.

Mrs. Bouslog: Yes, I do. We offer to prove all the [209] allegations contained in the verified complaint. We offer to prove that there is no conflict of interests between Lucy K. Ward and the interests of Hattie Kulamanu Ward. We offer to show that Lucy K. Ward has managed and properly and prudently managed with great business acumen the estate of Hattie Kulamanu Ward for a period of years; that she has not risked the capital of Hattie Kulamanu Ward, but has invested it in investments which are safe investments; that she has built up in fact Hattie Kulamanu Ward's estate greater than her own; that she has given it more care than she has in the management of her own in respect to risking capital.

That she has, over the period of years when she has assisted her sister in the management of her property, charged no commissions or fees of any kind whatsoever; that she has the confidence and trust of Hattie Kulamanu Ward and has always had that confidence and trust, and that she has acted entirely and in complete good faith in the management of her sister's estate. We would show, for example, that it was Lucy K. Ward who on behalf of her sister bought the largest block of



shares for Hattie Kulamanu Ward in the family corporation, Victoria Ward, Ltd.

We will show in addition to the specific allegations in support of the general allegations contained in the guardianship matter, that there is a direct conflict of interests between the Hawaiian Trust Company and the Victoria Ward, Ltd., by virtue of the nature of the operations in which the Victoria Ward, Ltd., and the Hawaiian Trust Company operate in the particular business in which they engage. We will show [210] that because of this conflict of interests, the Hawaiian Trust Company is not a suitable trustee to manage the estate and property of Hattie Kulamanu Ward, who owns a large block of shares in that corporation.

We will show that it is to the financial detriment and interest of Hattie Kulamanu Ward that the Hawaiian Trust Company be appointed as her guardian of her estate, it now being properly and competently managed, and has always been so managed without cost to her, and the excessive cost of Hawaiian Trust Company to the estate is unwarranted under the facts and circumstances which we would show to this Court.

We would show that the Hawaiian Trust Company has indicated an intention to place itself upon the board of directors of the Victoria Ward, Ltd., that it is not to the interest of Hattie Kulamanu Ward or the Victoria Ward, Ltd., in which she owns a large block of stock, because of the conflicting interest between them.

We will show certain past attempts of the Ha-

waiian Trust Company and the directors of the Hawaiian Trust Company to acquire land belonging to Hattie Kulamanu Ward and the Victoria Ward, Ltd.

We will show through competent medical expert testimony the doubtful necessity of appointing a trustee for the estate of Hattie Kulamanu Ward. We will show that there are certain past acts and conduct of the Hawaiian Trust Company and its officers in respect to other estates in which Hattie Kulamanu Ward has an interest which indicate that it would not be to the interest of Hattie Kulamanu Ward or her estate to have her property managed by the Hawaiian Trust Company or any [211] trust company because of the conflict of interest in the nature of the business.

We will show that the Hawaiian Trust Company has indicated an intention to sell certain of the property of Hattie Kulamanu Ward and that it is not in the interest of Hattie Kulamanu Ward that the property and stock indicated be sold.

We will note an appeal from the ruling of this Court in respect to the motion to vacate and to hold further hearings in respect to the motion to remove the Hawaiian Trust Company as guardian, and we will ask the Court, at this time, pending the appeal to the Supreme Court of the Territory to continue in effect the restraining order prohibiting the Hawaiian Trust Company from voting the stock of Hattie Kulamanu Ward in the Victoria Ward, Ltd., pending the appeal and the determination of the suitability and propriety of Hawaiian

Trust Company as guardian of the estate of Hattie Kulamanu Ward. I assume that from your Honor's previous ruling that you would not continue any restraint pending appeal.

The Court: The Court has indicated that I am vacating the appointment of Lucy Ward as next friend to bring these proceedings, Mrs. Bouslog, on the ground that your client, Lucy K. Ward, is estopped from the very record here from appearing and reopening and rehashing what she consented to and acquiesced in in the action of this Court.

Mrs. Bouslog: As part of our offer of proof I wish to add this: We will show that Lucy K. Ward did not appear in the former proceedings, and we offer to show that her instructions to oppose the appointment of the Hawaiian Trust Company were not respected by the attorney who appeared on her behalf in that proceeding. But this proceeding is not [212] on behalf of Lucy K. Ward; it is on behalf of Hattie Kulamanu Ward as her next friend.

The Court: I will have to interrupt you there that it is obvious on the record that it is tweedledum and tweedle-dee that Lucy K. Ward is appearing because Lucy K. Ward's interests have been jeopardized in the proceedings and not Hattie Kulamanu Ward's. The fact is that by the appointment of the guardian the guardian is simply now in the necessity of being a party to the various family proceedings insofar as its ward's interests are concerned, and the family are in the same position joining with Lucy Ward or joining with the Ha-



Hawaiian Trust Company on matters that are properly protecting of their interests. As to the personal conduct of Lucy Ward to her sister, there is nothing in the record that indicates that it hasn't been anything but exemplary, and that is the reason the Court refused to go into the question of appointing a personal guardian, as the Court was apprised by all the parties that the personal affairs of the ward were being very satisfactorily taken care of; but that the property interests, the very record, itself, shows the carelessness with which you use the truth, Mrs. Bouslog, that Lucy K. Ward's interests as a property owner are directly adverse to her sister's as a property owner. That is in the record.

Mrs. Bouslog: Your statement to the effect is in the record.

The Court: No one with any common sense can take any other conclusion but what the two sisters whose interests are individual would have conflicting interests in the [213] question of the administration of the property where one is incompetent and the other is playing the situation as controller of the incompetent's interests.

Mrs. Bouslog: Your Honor, I want to point out that your Honor found that there was a conflict of interests, or said on the record that there was a conflict of interests between Lucy K. Ward and Kathleen Ward; yet at the same time your Honor by the appointment of the Hawaiian Trust Company as trustee turned the control over to other sisters who must have exactly the same conflicting interests, if there is such a thing.



The Court: I haven't turned the control over to anybody. The question of how they readjust their affairs amongst one another is a matter of future business and justification of their accountings.

Mrs. Bouslog: I have one more point to add to my offer of proof. We will prove that the proceedings for the appointment of a guardian of Hattie Kulamanu Ward were brought not in the interests of Hattie Kulamanu Ward, but for the purpose of using her interests, her stock interests in Victoria Ward, Ltd., as a tool to gain control of the Victoria Ward, Ltd., and that the proceedings had and the hearings held here have not been in the interests of the property and estate of Hattie Kulamanu Ward, but have been motivated and have been prompted and have been done and the conduct taken shows that what will be done unless the Hawaiian Trust Company is removed as guardian will be to the serious detriment of the Estate of Hattie Kulamanu Ward.

The Court: There is one other matter that is pending before the Court, and that is a motion for an order of [214] delivery of records.

Mr. Anthony: Before we leave that, your Honor, I would like to have a ruling of the Court on our prayer in the return that the statute requires the deposit of a bond before the issuance of any restraining order restraining a person in the exercise of his property rights. This restraining order was not only obtained without service on counsel at a time when counsel for the movant was talking to me, but in violation of the statutory provision it

was obtained without the deposit of the requisite bond. It has been held repeatedly by the Supreme Court on vacating a temporary restraining order that the losing party is obliged to pay the cost of the proceeding. There is no reason that I can see why the estate of Hattie Kulamanu Ward should be obliged to pay for my services investigating this matter and preparing these papers which were needlessly prepared. It should be borne by the movant.

The Court: What is the basis on which you are asking for fees, etc.?

Mr. Anthony: Well, the motion was brought in violation——

The Court: Yes, I know, but complete your motion. What is your motion now as to the fixing of fees?

Mr. Anthony: I move that a reasonable attorney's fee be fixed in this case for vacation of the temporary restraining order.

Mrs. Bouslog: Your Honor, I would like to point out to the Court that it has been the practice of the Circuit Courts of the Territory not to require bonds unless actual property is restrained. There is no property that has been [215] restrained here. There is no basis in law or in fact for Mr. Anthony's request. He has improperly stated that a bond was required when the statute does not require it, and as your Honor knows it has been customary to issue ex parte restraining orders, temporary restraining orders in many cases without any bond whatsoever

and without even the allowance of any attorney's fees when the ex parte order was set aside.

The Court: What is counsel's estimate as to reasonable attorney's fees?

Mr. Anthony: I would say \$200, your Honor. I would be content with anything, but whatever it is I would take the Court's order on a reasonable amount. I don't think this ward's estate should be saddled with this kind of proceeding. Whatever the Court fixes is agreeable with me.

The Court: Well, the Court will vacate the restraining order, vacate the entire proceedings of the appointment as I indicated and sign an order to that effect and award counsel fees against the movant in the sum of \$100, and costs of Court.

Mrs. Bouslog: We would note an exception to the Court's ruling and note an appeal.

The Court: Now the question of the motion for delivery of record.

Mr. Bouslog: Your Honor, at this time, this motion was served upon the parties yesterday. At this time we would request the Court that counsel for the Hawaiian Trust Company make more specific its motion since it is impossible to tell from the form of the motion what papers or documents the Hawaiian Trust Company requires. Representatives of the [216] Hawaiian Trust Company have spent many hours in the office of the accountant for the Victoria Ward, Ltd., and they have examined the papers there. Now we would like to have a written specification of the papers which the



guardian wishes. From the form of the motion it is impossible to tell.

The Court: Mrs. Bouslog, the record here is that, and upon your own offer of proof, that Lucy K. Ward has been the acting manager of Hattie Kulamanu Ward's affairs for years. How in the world is the newly appointed guardian to know what papers she has. She is in the position of knowing what belongs to her sister and should have turned it over without an order.

Mrs. Bouslog: She has already turned over all the property to the trust company.

Mr. Anthony: This is a typical dodging. To give your Honor a specific example, the guardian is under a statutory duty to file an income tax return yesterday. He was unable to do so because the check books are in this woman's possession, or somebody has got it, is secreting it from the guardian. Obviously we can't specify what the papers are. I suggest that we examine Miss Lucy Ward on the witness stand. We don't want anything she doesn't have, but whatever she has got we want it, and the only way for us to get it apparently is by an order of this Court. We want the check book. We want the tax returns. We want everything she has got in relation to the incompetent's property. By her own statement and her own pleadings she has been doing this for years, and we don't know what the papers are. More than that, [217] a letter was written enumerating the specific things that were requested, and they didn't comply with it. We have exhausted all reasonable



and peaceful methods, your Honor. The Hawaiian Trust Company, against my advice I might say, I took the position, knowing something about this situation that we had better have a proceeding here in court directing Miss Lucy Ward to turn over the documents. Hawaiian Trust Company said they had never heard of such a thing, that it would come right over automatically, and they proceeded in the normal way. It is true they got certain papers. They had to go to the record office for others. I don't know whether they have the documents, the leases and deeds, but certainly we don't have the check book and these things to make up the tax returns, and we can't get them without an order of this Court.

Mrs. Bouslog: If it is agreeable with counsel for the trust company, I would suggest that the Court set a later time for hearing on this motion, and in the meantime let's let counsel confer to see specifically what it is that is wanted. There has been a letter received from the Hawaiian Trust Company with which Mr. Hapai has tried to furnish all the information, the accountant has tried to furnish all the information. If we could have a conference, I think we can iron this thing out.

Mr. Anthony: A conference will do no earthly good, your Honor, and I think the guardian can only insist that an order be entered directing Lucy Ward to deliver over to it all books, papers and records belonging to this incompetent in her possession or subject to her control. Now whether or [218] not she later complies with that order will

depend on a subsequent proceeding, but I can see myself now conferring with Mrs. Bouslog and Mr. Henry Hapai. I tried to get some of these papers myself, and I have been subjected to the same run around. Nothing short of an order of this Court will suffice, your Honor.

Mrs. Bouslog: Well, your Honor, it is impossible to tell from the motion and from the material that has already been submitted to the Hawaiian Trust Company or records which they have been able to examine just exactly what it is that is wanted. I am not objecting to this Court making an order, but I was merely requesting that counsel confer first, and then if not satisfied, then we have a hearing on the motion. The motion in this form certainly does not apprise Miss Lucy Ward of what it is that the trust company wants. Do they want the papers back to 1870? How do you separate the papers affecting Hattie Kulamanu Ward and the papers affecting the Victoria Ward, Ltd., which are required to be kept in the office of the company. So I have no objection to Mr. Anthony having a hearing on his motion if first we may have a specification so that we may examine a report to the Court what specifically is available and the Court can then make its order.

Mr. Anthony: Will counsel let me examine the letter that Hawaiian Trust Company has addressed to your client? (Mr. Anthony quotes from document.) This is dated February 14th. "Miss Lucy K. Ward. We are pleased to inform you that the inventory of Miss H. Kulamanu Ward's assets has

been completed with the exception of certain land holdings at Halawa, [219] Molokai. The Maui tax assessor has been requested to supply us with this information and upon receipt of same we shall submit to the Court the completed inventory.

“Naturally there are many other extraordinary items of business in connection with your sister’s affairs still to be attended to by us; some in the immediate future and others at some later date. To keep you fully informed of the data which are still to be obtained and of some of the situations which we are obligated under the law to correct for the benefit of the ward we submit for your perusal a short outline of what we have in mind. It is felt that a full understanding on your part of the various problems at hand, most of which are closely linked to your own, will greatly reduce any possible misunderstanding and will assure a prompt and amicable solution.”

Then they discuss the matter of the practical nurse. (Continuing to quote from document):

“The following data for the checking of the last three Federal and Territorial income tax returns, as well as for the preparing of the 1948 returns, are needed and since we have no detailed accounts of her expenditures, we have to obtain this information from you. Since the 1948 returns have to be filed on or before March 15, we would appreciate receiving this information on or before February 25.”



The letter, incidentally, is dated the 14th. Then for 1945, 1946, 1947 and 1948 they list the following items that they have got to have information on: Medical expense, Territorial gross income taxes, tax on mainland dividends, property taxes, interest on bank loan, donations, Federal [220] estimated and final income taxes, other deductible items for three years.

(Continuing to quote from document):

“We may be able to get most of this information from Miss H. Kulamanu Ward’s check books. These should be turned over to us.

“We would also require a statement of operations for the Puuohoku Ranch for 1947 and 1948 in order to claim operating losses on the respective tax returns. We understand that for 1947 the losses of the Ranch amounted to approximately \$18,000.00 and since your sister has contributed one-half of the cash requirements, some \$9,000.00 in losses could be deducted from her tax return for 1947, thereby reducing her tax liability considerably. The same would apply to 1948 and for this reason we have to insist on getting this information.

“For our records we would have to be informed of the disposition of Miss H. Kulamanu Ward’s one-third interest in rentals for 1948 from jointly owned property which according to Mr. Hapai’s statement of December 31, 1948, before closing is listed at \$36,950.00 for rentals and \$6,841.86 for tax refunds. Her



one-third share amounts to \$14,597.29 and we have been unable to find such an item among the deposits to her checking account with the Bank of Hawaii. It is possible that this amount was credited to the ranch account of which we have no record.

“Among the ward’s assets are two concentrations, representing a large percentage thereof and for this reason require closer attention at this time; viz, 1230 shares Victoria Ward, [221] Ltd., and the one-half interest in Puuohoku Ranch.

“To properly protect the 23.653% interest in the Victoria Ward, Ltd., we consider it our duty to have one of our officers placed on the Board of Directors and with this thought in mind we shall request you in due time to call a special stockholders’ meeting.

“The investment in Puuohoku Ranch due to its unprofitable operations during the past year and a half, when economical conditions were very favorable for this type of business, may have to be classified as an undesirable holding for a guardianship account, in which event we would have to dispose of it.

“Without any doubt, there will be other problems arising from time to time and you may rest assured that we will keep you fully advised whenever mutual interests are involved.

“We hope that you fully understand our position as guardian and realize the responsi-

bilities placed upon us in this capacity. Your continued friendly cooperation will be greatly appreciated."

Now, the truth of the matter is this, we don't know what to specify. They have got the papers. All we have to do is to have an order entered substantially in the terms of the motion, and it will be self-operating. If they have in fact turned them over, that is the end of it. If in fact they have not turned them over, and the guardian brings that to the attention of the Court, then a proceeding can be had on that failure to comply. But we certainly must have the order. Otherwise, our hands are tied.

Mrs. Bouslog: I would like to say this, that all of the information specified has been, the tax returns, the Territorial gross income tax paid, the Territorial property, [222] all the tax returns, I believe Mr. Klebahn and an employee spent considerable time checking those returns in the office of the company. There are several errors in the inventory and a misunderstanding as to the Puuhoku Ranch, about the income tax returns, which need to be straightened out, because it is my understanding that Hattie Kulamann Ward's money has not been invested in the ranching operations, that she is the owner of the land, that the business venture is at the risk of her sister's estate, and that her money has not been invested in the ranching operations as such, but she is to share in the profits of the use of the land if and when there are any.

but that her money has not been invested in the ranching operations as such.

Mr. Anthony: Your Honor, I don't accept counsel's statement. I have got an officer of Hawaiian Trust Company here, and I would prefer to put him on the witness stand and have him say what has been delivered and what he needs.

The Court: We will take a five-minute recess.

(Recess.)

A. F. MAHN

called as a witness, being first duly sworn, was examined and testified as follows:

### Direct Examination

By Mr. Anthony:

Q. Your name, please? A. A. F. Mahn.

Q. You are an officer of Hawaiian Trust Company, Ltd.?

A. I am vice-president and treasurer.

Q. Mr. Mahn, have you made an effort to get certain books, records and papers belonging to the incompetent's estate [223] from Lucy Ward?

A. I personally did not make any effort, but I had certain people sent over to the office for information.

Q. Did you get that information?

A. We got part of the information.

Mrs. Bouslog: Your Honor, this man can't testify as to his own knowledge as to what the people did whom he sent over there. I suggest we have someone who was actually there.

(Testimony of A. F. Mahn.)

The Court: He is competent to testify whether he got any information back.

Mrs. Bouslog: I will ask his testimony as to what conversations were had and what he got be stricken.

Mr. Anthony: I haven't asked him about any conversations.

Mrs. Bouslog: He said he wasn't there. He didn't go. He didn't know what happened. I think it is hearsay what he says.

Q. (By Mr. Anthony): Mr. Mahn, what does the guardian need in order to conduct the affairs of this estate? What information do you need?

A. We should be furnished with all the receipts and disbursements made during the past few years in order to properly check any past tax returns.

Q. You need the check book?

A. We need the check book.

Q. Over a period of years?

A. Over at least four years, at least.

Q. And you have to make up an income tax return?

A. For the income tax return we require an itemized statement [224] of all deductions, especially in regard to medical expenses, nurses' fees, etc., as well as any other donations which may have been made.

Q. You need an itemized account of expenses paid for keeping the records and accounts of the incompetent's estate, do you not? A. We do.



(Testimony of A. F. Mahn.)

Q. Have there been such expenses in the past before the appointment of the guardian?

A. There have been.

Q. And you have to have those figures in order to present a proper deduction?

A. Yes, we should be furnished with all that information.

Q. There are specifically fees of Mr. Hapai for keeping the books and records, is that correct?

A. That is correct.

Q. Does Lucy Ward have an office in this city, do you know, or does she have an office in the office of Victoria Ward, Ltd.?

A. There is an office at King Street. I believe it is Victoria Ward, Ltd.'s, office. And at times she may be found at Mr. Hapai's office.

Q. You heard the letter which I read to the Court from the Hawaiian Trust company dated February 14?

A. Yes.

Q. Has that request been complied with? Was that information delivered over to you?

A. Not the tax information. The tax information has not been furnished us which we specified in the letter. [225]

Q. Well, have any papers been delivered over to you?

A. We did receive deeds to certain properties. I believe we have a complete file of all the existing leases, in connection with the ward's property,

Q. You had to get those things from the record office, did you?

A. Most of it.

(Testimony of A. F. Mahn.)

Q. You couldn't get them from Lucy Ward?

A. No, because they were covering only jointly owned property.

Q. I see. Specifically you need all the papers in the possession of Lucy Ward or anybody who is acting under her control, such as Mr. Hapai, in order to do your job as guardian?

A. Yes.

Mr. Anthony: That's all.

### Cross-Examination

By Mrs. Bouslog:

Q. Did you at any time ever confer with Mr. Hapai about the information that you desired to get from him?

A. I had a couple of telephone calls.

Q. With Mr. Hapai? A. With Mr. Hapai.

Q. Whom did you send over to the office of Mr. Hapai for the purpose of examining the tax returns and the other information?

A. One of the members of our income tax department.

Q. Do you remember who it was?

A. Henry Chuck.

Q. Henry Chun? A. Chuck. [226]

Q. Did you yourself participate in any way in the making out of the inventory of the Hattie Kulamanu Ward estate?

A. I did.

Q. You were given the information, you were furnished the information about the assets in her estate by Mr. Hapai?

A. No.

Q. Where did you get the information from?

(Testimony of A. F. Mahn.)

A. Two of our officers went over and saw Mr. Hapai and Miss Lucy Ward.

Q. They were furnished that information by Mr. Hapai and by Miss Lucy Ward?

A. Yes, in connection with the inventory.

Q. Yes. And you say the copies of the documents and leases which you got from the recorder's office were joint leases of property belonging to, as joint tenants, to Hattie Kulamanu Ward, Lucy K. Ward and Kathleen Ward?

A. That's right.

Q. Much of the property held by Hattie Kulamanu Ward is jointly owned property, is it not?

A. Yes, real estate, I would say.

Q. And the tax returns were filed for Hattie Kulamanu Ward for the years 1945, 1946 and 1947 and your officers or agents have examined those returns?

A. We did not get any copies, which we requested.

Q. But you have examined the returns in the office of Mr. Hapai?      A. That is correct.

Q. You were free to make copies of those and you did in fact make copies?

A. We did. [227]

Mr. Anthony: We object to that. That is utterly immaterial. These papers of the incompetent ought to be delivered over to us. They don't belong to Mr. Hapai or Lucy Ward. They belong to the guardian under the order of this Court. I don't know whether they are accurate or not, the

(Testimony of A. F. Mahn.)

copies made under the circumstances they were made. Whatever papers there are, they should be delivered over to us.

Mrs. Bouslog: Your Honor, the record shows that in this case that there was no appointment of a guardian until January 13, 1949. There is no showing that her property was incompetently or otherwise mishandled prior to that time. The tax returns for 1945, 1946 and 1947 have been made available to the Hawaiian Trust Company.

The Court: Mrs. Bouslog, it seems to the Court the burden is upon your client, not upon the guardian, the burden is upon her to determine and deliver over all information requested, and the burden is upon her that if she conceals things which are rightfully the property of the guardian that the responsibility for such a concealment should be hers and not through lack of knowledge the guardian's, so that the natural order that would have to be granted would be that Miss Lucy Ward and anyone under her control turn over such documents that exclusively reflect the property of the ward and make available information on any other documents on which there is a joint interest, so that the compliance with it would be the responsibility of your clients.

Mrs. Bouslog: Yes, your Honor, what we are objecting to is by the testimony of this witness there has been no evidence of any refusal to permit complete examination of the papers in the office.



(Testimony of A. F. Mahn.)

I have no further questions of [228] this witness, but I would like to call some witnesses.

### Redirect Examination

By Mr. Anthony:

Q. You don't have the check book?

A. No.

Q. You need that, you need the check book for past years?

Mrs. Bouslog: Will counsel stop leading the witness?

Mr. Anthony: I will not, not on a question like that, until I am ordered by the Court.

Mrs. Bouslog: I object to the form of the question, your Honor, as leading.

The Court: Objection sustained.

Q. Do you require a check book?

A. We do.

Q. To make a tax return? A. We do.

Q. And that should cover a period of years?

A. At least four years.

Mrs. Bouslog: May Mr. Anthony be sworn so that he can testify?

The Court: Objection overruled.

Mr. Anthony: No further questions.

(The witness was excused.)

HENRY C. HAPAI

called as a witness, being first duly sworn, was examined and testified as follows:

Direct Examination

By Mrs. Bouslog:

Q. State your name, please.

A. Henry C. Hapai.

Q. You are an officer of Victoria Ward, [229] Ltd.?

A. Vice-president.

Q. What services have you performed in respect to the property of Hattie Kulamanu Ward?

A. I was accountant for Hattie Kulamanu Ward.

Q. What, if any, dealings have you had in respect to the estate of Hattie Kulamanu Ward since January 13, 1949, when the guardian was appointed?

A. Nothing.

Q. Have you had occasion to confer with any representatives of the Hawaiian Trust Company who were appointed guardian?

A. Since appointment?

Q. Since the appointment.

A. I have.

Q. With whom have you conferred?

A. Mr. Klebahn and Mr. McLane.

Q. Mr. Anthony read into the record a letter addressed to Miss Lucy K. Ward in which the Hawaiian Trust Company made certain requests for information. This is the specific information which they requested. Let the record show I am handing to Mr. Hapai the letter of the Hawaiian

(Testimony of Henry C. Hapai.)

Trust Company calling for certain itemized information. Will you tell the Court what if any information you were able to give and did give the Hawaiian Trust Company respecting the items listed there?

A. These informations are all in my files and the representative of the Hawaiian Trust Company had the privilege of checking my files. All these informations are in my files. The man that checked my files never asked me questions in regard to these things, just went over my files, and that's all I know about it. And those files are my personal property. [230]

Q. They are your records of what you did?

A. They are my records.

Q. As an accountant?

A. As an accountant.

Q. For Hattie Kulamanu Ward? A. Yes.

Q. And did the officers who came over ask you to remove your records in respect to Hattie Kulamanu Ward? A. No.

Q. Did they ask to make copies of them?

A. No.

Q. Did you permit them to examine them without any hindrance? A. Yes, I did.

Q. Did you attempt to give them every assistance you could in the information which they wanted?

A. They didn't ask me for it. If they did, I would give them the assistance. It was all in the files.

Q. You gave them the files?

(Testimony of Henry C. Hapai.)

A. I turned over the whole files.

Q. You are the one who has kept those records, are you?      A. I am.

Q. Did you prepare the tax returns for Hattie Kulamanu Ward for the years 1945, 1946 and 1947?      A. Yes, I did.

Q. You made copies of those returns available to them?      A. Those copies are in my files.

Q. You note that the Hawaiian Trust Company raises some question in respect to losses on tax returns for 1947 and 1948 in relation to the Puuohoku Ranch. Does Miss Hattie Kulamanu Ward's estate, was it charged any of the losses of [231] the ranching operations?      A. No.

Q. Was the money of Hattie Kulamanu Ward invested in the ranching operations?

A. Not that I know of.

Q. But Miss Hattie Kulamanu Ward has an interest in the land?      A. In the land.

Q. Have there been any profits from that operation?      A. None.

Q. Did the Hawaiian Trust Company representatives give you any reason to believe that corrected or amended returns should be filed for the years 1945, 1946 and 1947?      A. No.

Q. Do those returns reflect fully the income and deductible losses of Hattie Kulamanu Ward?

A. They do.

Q. And you stand ready at all times to permit the Hawaiian Trust Company as guardian to examine any and all papers you have in your office



(Testimony of Henry C. Hapai.)

relating to the estate of Hattie Kulamanu Ward?

A. I do.

Cross-Examination

By Mr. Anthony:

Q. Mr. Hapai, do you have the check book?

A. I do not.

Q. Where is it? A. I don't know.

Q. You haven't been doing the business for Miss Lucy Ward? [232]

A. I collected what belongs to her and I deposit it in the bank. The spending of that money I have nothing to do with it.

Q. You have the tax returns of Hattie Kulamanu Ward in that file you have been talking about? A. I have.

Q. That is your personal property, is it?

A. That is my personal property.

Q. In other words, you insist you own——

A. Anybody can look at it, but they can't take it away from my file.

Q. I see; except by order of this Court?

A. If you once take it away from my file, I have got no record.

Q. You say you don't know where the check book is?

A. Never had anything to do with it.

Q. Do you know whether or not Hattie Kulamanu Ward ever wrote any checks?

A. I saw a check, I think it was \$200, that she signed, for some donation to the Community Chest. I think that is the only one I can remember.

(Testimony of Henry C. Hapai.)

Q. All of her disbursements have been signed by Lucy Ward, isn't that right?

A. I don't know.

Q. Didn't you make up her tax return?

A. I make the tax returns and the checks are paid.

Q. You never examine any disbursements or checks?

A. Well, sometimes I do, but I can't remember whether she signed it. She must have signed the check to the tax people.

Q. You know where the canceled checks are kept? [233]

A. I think Miss Lucy has them.

Mr. Anthony: Maybe we had better ask Miss Lucy.

### Redirect Examination

By Mrs. Bouslog:

Q. Have you seen the inventory which the Hawaiian Trust Company has filed in this case?

A. I have.

Q. Do you know where the Hawaiian Trust Company got the information to file this inventory of Hattie Kulamanu Ward? Did you confer with them and furnish them any information?

A. I furnished the Hawaiian Trust Company with the balance sheet of Hattie Kulamanu Ward as of before and after closing on December 31, 1948.

Q. Is this the copy of the document which you furnished them?

(Testimony of Henry C. Hapai.)

A. I think it is the same amount of shares; I see Alexander and Baldwin 140 shares. The only difference here, Hawaiian Commercial, it had here 504 shares. I have in my balance sheet 555. Then the Hawaiian Trust has Maui Agriculture Company 17 shares. That was the difference between, because there were three shares in the merger of Hawaiian Commercial and the Maui Agriculture. There were 3 shares of Hawaiian Commercial issued for 17 shares of the Maui Agriculture, which made 51 shares. Add 504 and 51 which made my balance sheet 555. That is the difference.

Q. So that this inventory filed by the guardian here was based upon information furnished by you?

A. It must have been copied from my balance sheet.

Q. Now, in respect to the property that is jointly owned by Hattie, Lucy and Kathleen, are joint records kept in respect to those [234] properties?

A. The income from the joint property, joint accounts.

Q. In other words, you have, for example, in your office a file dealing with a particular piece of property held in joint tenancy, and there is just one file for the three?

A. No, a different set of books for the joint account, which includes the properties held jointly.

Q. There is a set of books for the properties owned jointly?      A. Yes.

(Testimony of Henry C. Hapai.)

Q. Then the profits from that particular property are divided at the end of the year?

A. No, deposited in the Bishop National Bank under a joint account; and the drawing of that joint account, I have nothing to do with that, but for taxation purposes at the close of the year I journalize from the joint account into the individual account the amounts that went into the joint account, and that is all the journal entry.

Q. The files and records in your office which you keep as an officer of the Victoria Ward, Ltd., and as accountant for Hattie Kulamanu Ward, where they deal with joint property the papers in the file pertain to the estates of all three sisters?

A. The joint account?

Q. Yes. A. Yes.

Q. Have you ever at any time refused to make available any papers requested by the Hawaiian Trust Company or its officers? A. No.

Q. Do you stand willing now without order of the Court to voluntarily permit the examination of the papers and records in your office which pertain to the estate and property [235] interests of Hattie Kulamanu Ward? A. Yes, I am.

Mrs. Bouslog: I have no further questions.

Mr. Anthony: I would like to ask Miss Lucy Ward a few questions.

(The witness was excused.)

Mrs. Bouslog: I will state at this time that Miss Lucy Ward will furnish to the Hawaiian Trust Company, pending further order of another Court



the check books of the Hattie Kulamanu Ward estate either drawn by Hattie Kulamanu Ward or drawn by herself.

Mr. Anthony: I would like to examine the witness, your Honor.

The Court: Swear the witness.

### LUCY K. WARD

called as a witness, being first duly sworn, was examined and testified as follows:

Mrs. Bouslog: Are you calling Lucy as your witness?

Mr. Anthony: As a hostile witness under the statute.

Mrs. Bouslog: I would prefer to call Lucy and to question her and then you may cross-examine her.

Mr. Anthony: Under the statute I am entitled to call the witness, your Honor. You can do as you choose.

Mrs. Bouslog: The Court said the burden was on me and I was assuming my burden.

Mr. Anthony: You may go ahead and examine her then.

### Direct Examination

By Mrs. Bouslog:

Q. First will you state your full name, please?

A. Lucy K. Ward.

Q. And you are the sister of Hattie Kulamanu Ward?      A. I am.

Q. How long have you served as her attorney in fact?      A. Oh, over 40 years, or more.

(Testimony of Lucy K. Ward.)

Q. You have managed her property and estate?

A. I have.

Q. At her request? A. At her request.

Q. And under consultation with her?

A. Always.

Q. Since January 13, 1949, when the Hawaiian Trust Company was appointed by this Court as guardian, what if anything have you done with respect to disbursements of any moneys by Hattie Kulamanu Ward?

A. I have done that through Mr. Hapai who has charge of all that.

Q. Since January 14th?

A. Oh, no, I haven't done anything.

Q. Have you personally out of your own moneys paid the expenses of maintaining Hattie Kulamanu Ward?

A. Yes, we have done it personally.

Q. Since the time of the appointment of the guardian? A. Yes.

Q. When you received this letter from the Hawaiian Trust Company dated February 14, 1949, did you instruct Mr. Hapai to give the Hawaiian Trust Company the information that they requested? A. I did.

Q. And did you have any indication from them that they were [237] not satisfied with the information that had been furnished to them?

A. I did. I told Mr. Hapai about it, and he in turn was taking it up with the Hawaiian Trust.

Q. Did you instruct Mr. Hapai to give every

(Testimony of Lucy K. Ward.)

assistance in respect to Kulamanu's property to the Hawaiian Trust Company?

A. Yes, but he didn't have to be told.

Q. He did anyway?

A. He did it anyway.

Q. You own jointly, or you purchased jointly with Hattie Kulamanu Ward in 1947 some property on Molokai?      A. I did.

Q. Will you tell the Court what the Puuohoku Ranch is and who puts up the expenses for the operation of that ranch?

Mr. Anthony: I object to that as immaterial. It has nothing to do with the production of records.

Mrs. Bouslog: Mr. Anthony, your client has requested——

Mr. Anthony: All right, I will withdraw it. I don't want to listen to a half hour of this explanation.

(The question was read by the reporter.)

A. The Puuohoku Ranch is, we are raising cattle. We are raising taro, too. I have furnished, paid for the ranch hands, everything, in fact. Kulamanu hasn't figured in anything of that sort.

Q. Have there been any profits from the operation of that ranch?

A. No, there have been losses.

Q. And the capital invested in the actual operations of that ranch has been your own? [238]

A. All my own.

Q. When was this property purchased?

(Testimony of Lucy K. Ward.)

A. Oh, it was in June, 1946.

Q. There hasn't been any income from that property since its purchase? A. No.

Q. What interest does Kulamanu have in the Molokai land?

A. In the Molokai land she has just the land interest. I have furnished everything over that. That is the cattle and all.

Q. She is joint owner with you of the land itself? A. The land itself.

Q. What, if any, division would be made of any profits from the operation of the ranch?

A. Personally, I feel half.

Q. In other words, it has been your intention when you have profitable operations there to pay to Kulamanu half of the proceeds of the operation of the business? A. Yes.

Q. Has Kulamanu ever been to the ranch?

A. Yes, she has been up there several times.

Q. What was your purpose, part of your purpose in buying the property and operating the ranch?

A. It was such a beautiful piece that I could see great prospects from it.

Q. Have you had offers equal to your purchase price for the sale of the land since the time you purchased it?

A. I purchased the land right from Mrs. Fagan, but Mr. Fagan after we had made the deal said to me, "Any time you want to sell, let me know, and I will take it off your hands." [239]



(Testimony of Lucy K. Ward.)

Q. Have you had other offers in relation to the property?

A. Well, to parts of the property, yes.

Q. How long have you engaged in business and management of property in the Territory?

A. Well, I should say about 30 years.

Q. Do you consider——

Mr. Anthony: We object to this. This has nothing to do with records. I would like to conclude this matter. It is a simple matter whether she has got the check book, or do we have to have a further proceeding to bring her up here. That is the substance of what we are getting at here.

Mrs. Bouslog: I would like to state, your Honor, that it was Mr. Anthony who read into the record a letter from the Hawaiian Trust Company which spoke of the Puuohoku Ranch which was highly critical of the operation which demanded and suggested the necessity for the sale of the ranch and inquired about the losses which might be attributable to Kulamanu's estate for the years 1946, 1947 and 1948.

The Court: Can't we get down to the question of what records, if any, she has that haven't been turned over?

Q. With the exception of the check books, where are the records, all the records you have in respect to Kulamanu's estate and the papers in respect to her estate?

A. They are down in Mr. Hapai's office.

Q. Where are the check books?

(Testimony of Lucy K. Ward.)

A. The check book is up in my office.

Q. Are you willing to turn over the check books of Kulamanu, affecting Kulamanu Ward's accounts to the Hawaiian Trust Company or to permit them to examine the records, where they are intermingled where you own joint property? [240]

A. Yes; yes.

Q. And some of the accounts on your joint property with Kulamanu and Kathleen are in one account?

A. Practically all are joint accounts. All of our accounts.

Q. So that it would be impossible to turn them over to the Hawaiian Trust Company without turning over your own and Kathleen's records?

A. Yes.

Q. But you are willing to permit them full, free and unhampered examination of the records that you have? A. Yes.

Q. Do you have any records and papers pertaining only to Kulamanu's property which would reflect, covering the last year or so period which you have not turned over or which Hawaiian Trust Company hasn't had a chance to examine in Mr. Hapai's office?

A. I think they have examined almost everything there at Mr. Hapai's office.

Q. You have no evidences of her property other than disbursements through her checking accounts and the joint checking accounts that you have just spoken about?

(Testimony of Lucy K. Ward.)

A. Yes, I just pay the bills, that's all.

### Cross-Examination

By Mr. Anthony:

Q. Do you keep a separate checking account for Kulamanu?      A. I do.

Q. How long have you kept this separate account?

A. Oh, the last 30 or 40 years or more than that.

Q. You have the canceled checks over a period of years [241] in your possession?

A. I have.

Q. Where are they?

A. They are in my office.

Q. And you have a check book that is current that relates exclusively to Kulamanu Ward?

A. I have.

Q. That is also in your office?

A. It is.

Q. You also have a check book that relates to the joint accounts of the three sisters, Kulamanu, Kathleen and yourself?

A. That is the joint account. Mr. Hapai has all of that.

Q. Does he have the canceled checks?

A. No, I have those.

Q. You have those?      A. Yes.

Q. Do you have bank statements for these two accounts in your possession?      A. We do, yes.

(Testimony of Lucy K. Ward.)

Q. And they go back over a period of years, do they not?      A. Indeed yes.

Q. You are an officer of Victoria Ward, Ltd., are you not?      A. I am.

Q. And Mr. Hapai is likewise an officer?

A. He is an officer.

Q. Salaried officers?      A. Salaried officers.

Q. What does he get?      A. Mr. Hapai?

Q. Yes. [242]

A. He gets the same amount as we gave him before he became an officer, and that is \$750.

Q. 7% of what?      A. I didn't say 7%.

Q. He gets what?      A. \$750.

Q. A month?      A. A month, yes.

Q. You draw a salary?      A. Not now.

Q. When did you stop?

A. When Edward Hustace arrived.

Q. What was your salary at that time?

A. \$575.

Q. Does Kathleen draw a salary?

A. She drew the same as I did.

Q. Any of the other sisters draw a salary?

A. No.

Q. Just you two and Mr. Hapai?

A. That's all.

Q. Does Mr. Hapai have a son that works for the corporation?

A. He does. He is a, it is an office of his own.

Q. Does he draw a salary from the corporation?

A. No, he does not.

Q. Never has?      A. No, he never has.



(Testimony of Lucy K. Ward.)

Q. You are prepared to turn over these records that belong to the incompetent to the Hawaiian Trust Company, are you not?

A. I would like to have them gone over in my office, as they are not only mine. [243]

Q. Insofar as the records that belong to your sister Kulamanu you understand that you have no business withholding those from the guardian then?

Mrs. Bouslog: Your Honor, I object to counsel on examining the witness telling her what she has a right to do and what she has a right not to do.

Mr. Anthony: Isn't that true, Mrs. Bouslog?

Mrs. Bouslog: I would like to have him ask his questions and proceed with the examination.

The Court: If she has any papers that are exclusively reflecting the property rights of the ward, Mrs. Bouslog, who should they be in the hands of?

Mrs. Bouslog: Miss Ward has stated that she is willing to permit, that she has always been willing to permit Hawaiian Trust Company to examine in her office the books and papers that pertain to joint accounts and that she will for the last several years turn over the accounts of Kulamanu that are exclusively hers.

Q. Do you have any correspondence relating to the affairs of your sister Kulamanu in your possession? A. No, I haven't.

Q. You have never written anything about her property to anybody as attorney in fact, from her?

A. I have taken it up entirely with Mr. Hapai and we worked together on it.

(Testimony of Lucy K. Ward.)

Q. Then you do have correspondence in your possession that relates to the property interests of the incompetent, do you not?

A. That is in the joint account?

Q. Yes. [244]                      A. Yes.

Q. You have no correspondence that relates exclusively to Kulamanu's property?

A. I have not, because it is practically all a joint account, all our property.

Q. In other words, all of the income from Kulamanu's assets have gone into this joint account, is that it?                      A. Yes.

Q. And you are the person that draws the checks on the joint account?

A. She did it long ago once, but she can if she wants to.

Q. My question to you, Miss Lucy, is this: Are you the person that draws the checks on the joint account?                      A. Yes, I am the person.

Q. You have been doing that for a number of years?                      A. Yes.

Q. Does Kathleen draw on that account?

A. No, she does not.

Q. You are the sole one that draws on that account?                      A. Yes.

Mr. Anthony: No further questions. I renew the request that an order be entered. We can do nothing short of an order of the Court.

(Testimony of Lucy K. Ward.)

### Redirect Examination

By Mrs. Bouslog:

Q. Miss Lucy, how long have you held this property that has been jointly held, how long has it been jointly held by you, Hattie and Kulamanu?

A. The Old Plantation is one that I have held since my mother's death. [245]

Q. When did your mother die?

A. She died in 1935.

Q. And most of your joint property with your sisters Kulamanu and Kathleen is property left to you jointly by your mother? A. Yes.

Q. And it has been managed as joint property since that time? A. Yes, always.

Q. And the income of it deposited in the joint account? A. Joint account, yes.

Q. And that joint account has been used in part to keep up the property where you live?

A. It is, yes.

Q. To keep the house in repair?

A. The house in repair, and also the lower portion Victoria Ward Ltd., I was in that also.

Q. Is that account used to pay the salaries of household employees? A. Yes.

Q. And food?

A. Food, yes; everything.

Q. In other words, how long have you, Kathleen and Kulamanu lived together in the Old Plantation?

A. Oh, as long as mother owned it. We lived with mother first and then afterwards.

Q. And that arrangement about the joint ac-

(Testimony of Lucy K. Ward.)

count, did that exist before the death of your mother in 1935?      A. That we lived together?

Q. That you lived together and paid expenses this way out of the joint account. [246]

A. The joint account, we didn't have it then, until mother's death.

Q. Then you established the joint account?

A. Yes, the three of us.

Q. Was that with the knowledge and approval of Kulamanu?      A. Indeed, yes.

Q. And you say you are willing without an order of the Court to turn over to the Hawaiian Trust Company the bank statements belonging exclusively to Kulamanu's account?

A. Yes; how far back do you want it?

Mrs. Bouslog: Your Honor, I think we should limit the order to the last three years.

The Court: Finish the examination and then we will discuss it.

Q. You are willing to permit a representative of the Hawaiian Trust Company to examine all records pertaining to the joint account in the office of Victoria Ward Ltd. on King St.?

A. Yes.

#### Examination by the Court

Q. Do I understand, Miss Ward, that there is an office of Victoria Ward Ltd. somewhere?

A. Yes, it is on King Street, the Rice Building.

Q. Is there a separate office that you keep of your own, separately and distinct from Victoria Ward?      A. No, Victoria Ward, Ltd.



(Testimony of Lucy K. Ward.)

Q. You indicated that your check books and all that business were in your office. Is that a different office?      A. No, it is the same office.

Q. The same building, and accessible to anyone that goes up there?      A. Yes. [247]

Q. Are your accounts where they can be gotten at during reasonable business hours?

A. Not entirely because all the books and things, all taxes, and all of that are taken care of by Mr. Hapai.

Q. But these check books, where are they?

A. Those are in the office.

Q. Are they available for inspection during reasonable business hours?

A. Oh, yes; yes indeed. But I would like one person; I don't want the whole Hawaiian Trust to appear on the scene.

The Court: I can understand that you don't want the Republican and Democratic conventions being held up there.

Mrs. Bouslog: Your Honor, I think that the examination of the check books and accounts should be limited as to reasonableness of time.

Mr. Anthony: May we finish the examination of the witness?

#### Recross-Examination

By Mr. Anthony:

Q. Some of the records are in Mr. Hapai's office?      A. Yes, the tax records.

Q. Where is that?      A. Tax records.

(Testimony of Lucy K. Ward.)

Q. Where is that? A. Mr. Hapai's office.

Q. Where, what street?

A. Merchant Street, Schuman Building, Number 9.

Q. On Merchant Street?

A. Merchant Street.

Q. And the other records you refer to are in the office of [248] Victoria Ward Ltd.?

A. Yes, in the Rice Building.

Q. So the records are at two offices?

A. Yes.

Q. And you have none at your home?

A. No.

Mr. Anthony: That's all.

(The witness was excused.)

Mrs. Bouslog: On the showing made I think it is apparent, your Honor, that it isn't necessary for this Court to enter any order for the turning over of records and papers, that the records and papers in the office of Mr. Hapai have been made available to the Hawaiian Trust Company and its representatives. Lucy Ward has stated to this Court that she is willing voluntarily to permit examination of the accounts, of the check records, of the joint account and to turn over the accounts that pertain wholly to Kulamanu's estate. I think that under the circumstances shown here, the hostile, adverse character of this motion, it is apparent that it is not necessary and that in the interest of fairness I think that it is not necessary at this time for

the Court to make any order until there is a showing of an unwillingness to turn over without the necessity of an order being entered.

Mr. Anthony: Your Honor, we have a statute that relates to the concealment and withholding of records of an incompetent. This person has been in continuous violation of the statute since the date of appointment.

Mrs. Bouslog: There has been no such showing, your Honor. We have shown—— [249]

Mr. Anthony: Let me finish. You may address the Court when I am finished, Mrs. Bouslog. The witness on her own testimony says that she has got records exclusively relating to the property of the incompetent in her possession. She is under a statutory duty to promptly deliver those to the guardian and she has failed to do so. Now I say that under the circumstances we cannot ask for less than an order of this Court. It is entirely proper. She knew that she had those check books in her possession over a period of years, and yet she failed to turn them over even after receipt of the letter from the Hawaiian Trust Company of February 14th; and I say we are entitled to the order.

Mrs. Bouslog: In view of the fact that Mr. Anthony has made no showing of any kind of a refusal to cooperate with and to permit examination of the records, for him to have the audacity on the showing made to say to this Court that Lucy Ward has concealed the assets or the records of her sister when she keeps an open place of business in business hours, when the Hawaiian Trust Company and its



representatives have made use of those records and of those hours is wholly unwarranted, and I think that on the assurance of Miss Ward, that this Court does not need at this time to make any order whatsoever; that there has been an offer of full cooperation, and we have shown full cooperation in the past, and this is an unnecessarily insulting procedure which Mr. Garner Anthony chooses in this case to propose. This is part of the technique in opposition to the removal of the Hawaiian Trust Company as guardian to turn around and blacken and cast slander on the character of Miss Lucy Ward who has for many years managed the property. No [250] order is necessary, and I ask the Court to leave the matter in status quo, and on the statements of the witnesses here in court it is apparent that the information will be furnished.

The Court: I think that Miss Lucy Ward is entitled to have a clear statement from the Court without confusion of either counsel that she has a duty to perform in making available either at her own offices or through any of her agents, an inspection of all documents, check books and other papers that would reflect the business of the estate of the incompetent, and that upon such inspection any documents that are peculiarly and singularly the documents reflecting Hattie Kulamanu Ward's affairs should be made available if they are so segregated and found to be the incompetent's property that the papers be turned over to the guardian, and that copies of all other documents be permitted to be made at the usual business hours, and that that



direction should obviously be made so that Miss Ward knows that that is a duty she has to comply with, especially in connection with canceled checks, check books that reflect solely the personal business of Hattie, and inspection of the joint check books. As to all the check books and stubs and canceled checks in which Hattie's interests are affected; that whether they are in the possession of Mr. Hapai, her agent, or whether they are in her own possession, they should be made open and available.

The Court cannot at this time specify what documents as individual documents shall be finally turned over to the guardian because of the fact that there is an obvious confusion of matters in connection with the interests of all three sisters; but that that can be ascertained on the inspection, [251] and if there is any dispute between the parties as to who should be the custodian, then that can be brought to the attention of the appropriate court for settlement.

The Court is prepared to issue a general order that would require Miss Lucy to make available all papers pertaining to the, exclusively pertaining to the property of the ward, and make available for inspection all other documents and papers in which the ward's interests would be reflected so that ascertainment of information may be made available.

Mrs. Bouslog: Your Honor, I think the issuance, knowing as the Court knows that Mr. Anthony applied for this order as part of the strategy of opposing the motion and that there has been no

showing of the necessity for such an order, that the issuance of the order is improper.

The Court: The necessity is obvious from the non-voluntary compliance with the duty.

Mrs. Bouslog: I would like to have the Court limit the period of time in respect to the examination of records of the affairs of the Wards.

Mr. Anthony: I think that is reasonable, your Honor. I suggest after the death of Victoria Ward.

Mrs. Bouslog: Mr. Anthony has already suggested a moment ago, or Mr. Mahn when he was on the stand, said he needed them for a period of four years. I submit that is an unreasonable length of time. I suggest for a period of two years, the prior two years; there could be no need other than that.

Mr. Anthony: Your Honor, if your Honor is inclined to listen to my suggestion, may I point out before [252] the Court rules, on the showing here made and the showing heretofore made, Kulanu has been incompetent for years.

Mrs. Bouslog: There is no such showing in the record, and I object to that misrepresentation of counsel.

Mr. Anthony: You weren't here, Mrs. Bouslog.

The Court: The record before the Court at the time I have indicated, Mrs. Bouslog, justifies the inference that Hattie has not been competent to run her own affairs for years.

Mrs. Bouslog: Yes, but your Honor refuses to permit other competent expert testimony to show that your Honor did not have a full and complete picture at the time you drew your conclusions.

The Court: I am not going back into that feature of it. But the point is I am not at the present time going to limit the inspection to a number of years over which I have no information as to what will be necessary to find the roots of the inquiry. I am not in the business of knowing that, but the fact is that it should be done in reasonable business hours is to satisfy the guardian that the information has been obtained with the necessary efficiency. That is something that they will have to do, not I, and I can't restrict them to any short term of years but rather leave it to an open inspection of records at the present time limited to the period since the death of the mother, but not necessarily indicating thereby that they have got to go into all those records that far.

Mrs. Bouslog: When Mr. Mahn was on the stand he said all he needed was four years.

The Court: That may be all that they will undertake, [253] Mrs. Bouslog. I would say not to swim the river until you see the width.

Mrs. Bouslog: I would like to note an appeal from the Court's ruling that the issuance of an order is necessary in this case, and also from the refusal of the Court to grant a stay of the voting by Hawaiian Trust Company of the stock of Victoria Ward Ltd. pending the appeal to the Supreme Court in this case. [253-A]



## Concluding Remarks of the Court

The Court: Now, Mrs. Bouslog, I must say something in connection with your careless use of the truth. You have accused this Court of bias and prejudice against Miss Lucy Ward. While she is present within the hearing of my voice, I want to have her understand that that accusation is out of your mouth, but as far as the Court is concerned, Miss Lucy Ward as a person stands before the Court with the same consideration that I would give to anyone else, but I have had to make certain observations and inferences from the record as justifiable conclusions from the record which are not personal or in any way reflect any hostility in the Court's mind against your client. But I do certainly take issue with the distortion of truth that you have used in failing to answer and evading the questions of the Court, and I will say that in the presence of the audience, but it is not a bias or prejudice against your client, but I am certainly not in favor of the careless use of the truth from the record that has been obvious in the proceedings here by you, Mrs. Bouslog.

Mrs. Bouslog: May I speak, your Honor?

The Court: The Court has made it a matter of record, and I don't care to have any further argument or statement from you.

Mrs. Bouslog: I think it is unfair.

The Court: You may sit down, Mrs. Bouslog.

Mrs. Bouslog: I take exception to the remarks of the Court. I think the Court, from the very statements he made—I have read the record, your



Honor—from the statements that have been made, that on the basis of a very short record this Court draws conclusions over a period of 50 years, and accuses Miss Lucy Ward of mismanaging her affairs and concealing the incompetency of her sister whom she has given love and care, would manifest bias and prejudice against Miss Lucy Ward.

The Court: I haven't accused Miss Ward of stealing from her sister. That is your language. I have carefully refrained from any personal aspersions on the character of Miss Lucy Ward, but she has been caught in a situation where the situation speaks for itself and justifies the conclusions the Court has made.

There is nothing further before the Court except to sign the orders upon presentation.

(The hearing was concluded.)

#### Reporter's Certificate

I, L. T. Chaffee, Official Court Reporter for the Territory of Hawaii, do hereby certify that I wrote in shorthand the above proceedings and that the foregoing transcript is true and correct.

/s/ L. T. CHAFFEE.

[Endorsed]: Filed Circuit Court T.H., April 26, 1949. [256]

In the Supreme Court of the Territory of Hawaii

No. 2761 and No. 2762

[Title of Cause.]

SUPREME COURT CLERK'S CERTIFICATE

I, Leoti V. Krone, clerk of the supreme court of the Territory of Hawaii, do hereby certify that the foregoing documents listed in the index hereto attached are full, true and correct copies of the certified copies and of the originals on file in the above-entitled court and causes. I further certify that the transcripts of testimony, No. 1093, are certified copies in accordance with the certificates of the reporters, filed in said court and causes. I further certify that all documents listed in said index are attached hereto.

I further certify that the cost of the foregoing transcript of the record on appeal to the United States Court of Appeals for the Ninth Circuit is \$47.49, and that the said amount has been paid by the attorney for the appellant herein.

In Witness Whereof, I have hereunto set my hand and affixed the seal of the supreme court of the Territory of Hawaii, at Honolulu, this 5th day of June, 1951.

/s/ LEOTI V. KRONE,  
Clerk.

[Endorsed]: No. 12967. United States Court of Appeals for the Ninth Circuit. Lucy K. Ward, next friend of Hattie Kulamanu Ward and Lucy K. Ward and Kathleen Ward, Appellants, vs. Lanie W. Booth and Mellie E. Hustace and Hawaiian Trust Company, Limited, in its Corporate capacity and as Guardian of the Estate of Hattie Kulamanu ward, Appellees. Transcript of Record. Appeal from the Supreme Court of the Territory of Hawaii.

Filed June 8, 1951.

/s/ PAUL P. O'BRIEN,  
Clerk of the United States Court of Appeals for the  
Ninth Circuit.

United States Court of Appeals for the  
Ninth Circuit  
No. 12967

In the Matter of  
THE GUARDIANSHIP OF HATTIE KAULA-  
MANU WARD,

An Incompetent.

(Appeal from the Circuit Court, First Judicial Cir-  
cuit, the Honorable Albert M. Cristy, at Cham-  
bers in Probate No. 15530.

and

Error to the Circuit Court, First Judicial Circuit,  
the Honorable Albert M. Cristy, at Chambers in  
Probate No. 15530.)

Upon Appeal from the Supreme Court of the  
Territory of Hawaii

POINTS UPON WHICH APPELLANTS RELY

The appellants Lucy K. Ward, next friend of  
Hattie Kulamanu Ward, and Lucy K. Ward and  
Kathleen Ward, through Harriet Bouslog, of  
Bouslog & Symonds, their attorneys, hereby adopt  
their assignments of error appearing in the [258]  
transcript of the record as the points upon which  
they intend to rely on appeal.

Dated: Honolulu, T.H., this 17th day of May,  
1951.

BOUSLOG & SYMONDS,

By /s/ HARRIET BOUSLOG,  
Attorneys for Appellants.



Service of a copy of the above acknowledged, this 18th day of May, 1951.

ROBERTSON, CASTLE &  
ANTHONY,

By /s/ J. GARNER ANTHONY,  
Attorneys for Appellees.

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[Title of Court of Appeals and Cause.]

DESIGNATION OF RECORD FOR PRINTING

The appellants, Lucy K. Ward, next friend of Hattie Kulamanu Ward, and Lucy K. Ward and Kathleen Ward, through Harriet Bouslog, of Bouslog & Symonds, their attorneys, [261] designate the entire transcript of the record in this cause for printing.

Dated: Honolulu, T.H., this 17th day of May, 1951.

BOUSLOG & SYMONDS,

By /s/ HARRIET BOUSLOG,  
Attorneys for Appellants.